

# **Managing Expectations: the European Union and Human Security at the United Nations**

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## **Abstract**

This thesis explores the conditions under which the EU is an effective actor at the United Nations in the policy area of human security. Since the late 1990s, the United Nations has been increasingly active in addressing challenges posed by human security concerns. The concept of human security was introduced to emphasize the post-Cold War shift from a state-centred approach to security to an approach focused on the security of individuals. The EU is considered by some as a driving force in the UN policy process and has presented itself as a leader in the promotion of concrete initiatives to address human security challenges. This thesis seeks to examine whether the EU is truly an effective actor at the UN in human security negotiations and aims to identify conditions which influence the EU's effectiveness.

This thesis suggests that the analysis of conditions affecting the EU's effectiveness at the UN requires the understanding of the ways in which a complex web of actors and institutions interact at three different levels: international, European Union and domestic. Using a multilevel game approach, this thesis examines the willingness of EU actors to work collectively at the UN (internal effectiveness) and the achievements of the EU's objectives (external effectiveness). This thesis analyzes three cases of human security negotiations: 1) the ban on anti-personnel landmines, 2) the illicit trade in small arms and light weapons (SALW) and 3) the involvement of children in armed conflicts. Factors which have affected the EU's internal and external effectiveness are identified in each of the case studies. The thesis uses qualitative methods such as expert interviews, documentary analysis and non-participant observation.

This thesis demonstrates that, at the international level, the commitment of the EU to multilateralism can have an effect on the EU's effectiveness in human security negotiations. The position of other key UN actors (such as the United States and the G-77) regarding a potential agreement also appears to directly influence EU Member States in achieving their objectives. The thesis argues that the use of consensus in the negotiations process can have a significant impact on the EU's effectiveness. At the EU level, the analysis reveals that several key EU Member States channelled their efforts to convince their EU partners to act on all three issues. This thesis shows how the role of the EU presidency in coordinating the position of EU Member States can also affect the EU effectiveness in human security

negotiations. The support of France, Germany and the United Kingdom, three dominant players in the EU's Common Foreign and Security Policy, seems also particularly influential in negotiations. Finally, the case studies suggest that domestic politics can directly shape the EU's effectiveness. Internal negotiations in EU Member States and the involvement of NGOs at the domestic level are two other factors which influence the EU's effectiveness.

## **Declaration**

I hereby declare that, except where otherwise indicated, this thesis is entirely my own work, and that no part of it has been submitted for any other degree or qualification.

## List of Abbreviations and Acronyms

APL	Anti-personnel landmines
ATT	Arms Trade Treaty
BMS	Biennial Meeting of States on Small Arms
CCW	United Nations Convention on Certain Conventional Weapons
CARICOM	Caribbean Community
CD	United Nations Conference on Disarmament
CFSP	Common Foreign and Security Policy
CHR	Commission on Human Rights
COARM	Council Working Group on Conventional Arms Exports
CODUN	Council Working Group on Global Disarmament and Arms Control
COHOM	Council Working Group on Human Rights
CONUN	Council Working Group on the UN
COREPER	Committee of Permanent Representatives
CRC	Convention of the Rights of the Child
DG	Directorate-General (European Commission)
EC	European Community or European Communities
ECOSOC	United Nations Economic and Social Council
EDF	European Development Fund
ECHO	European Community Humanitarian Office
EIDHR	European Initiative for Democracy and Human Rights
EP	European Parliament
EPC	European Political Cooperation
ESS	European Security Strategy
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
G77	Group of 77
IANSA	International Action Network on Small Arms
ICBL	International Campaign to Ban Landmines
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ILO	International Labour Organisation
LDCs	Least Developed Countries
OP-AC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

NATO	North Atlantic Treaty Organisation
NGO	Non-governmental Organization
PoA	Programme of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light Weapons in all its Aspects
PREPCOM	Preparatory Committee (UN Conferences)
PSC	Political and Security Committee
SADC	Southern African Development Community
SALW	Small Arms and Light Weapons
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council

## Introduction

### The European Union at the UN: The Challenge of Human Security

*“As a union of 25 states with over 450 million people producing a quarter of the world’s Gross National Product (GNP), and with a wide range of instruments at its disposal, the European Union is inevitably a global player [...] Europe should be ready to share in the responsibility for global security and in building a better world.”*

*A Secure Europe in a Better World*, European Security Strategy, December 2003

*“For the future I want the European Commission to place even greater emphasis on human security, in areas such as stopping the proliferation of small arms, tackling the role of children in armed conflicts[..], A foreign policy that would not try to alleviate the plight of the individual would miss its point.”*

José Manuel Barroso, President of the European Commission, November 2004<sup>1</sup>

#### 1. 1 Introduction

One of the most distinctive features of the European Union (EU) in its fifties is its aspirations to influence in international affairs. The European Union’s constructive contribution to international organizations has become an important measure of the EU’s success as a global actor. The United Nations (UN), with its quasi-universal membership and its activities covering multiple areas, has been recognized as a prime forum for the European Union to contribute to strengthening international peace and security. As the United Nations was approaching its sixtieth anniversary, the EU reiterated its commitment to support and

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<sup>1</sup> Speech by J.M. Barroso on “The European Union and the Emerging World Order. Perceptions and Strategies” at the 7<sup>th</sup> ECSA World Conference, Brussels, 30/11/2004.

strengthen it. In September 2003, the European Commission published a communication to the Council and the European Parliament entitled *The European Union and the United Nations: the Choice of Multilateralism*.<sup>2</sup> The following December, the *European Security Strategy*<sup>3</sup>, approved by the European Council, affirmed the EU's commitment to strengthen its relationship with the United Nations. In April 2004, it was the turn of EU Member States to approve a report entitled *The Enlarging European Union at the United Nations: Making Multilateralism Matter*.<sup>4</sup> All of these documents highlighted the strengthening the UN as an EU priority.

While the EU is not a member of the UN, the 27 EU Member States now represent more than one eighth of the total number of members in the United Nations General Assembly (UNGA). They account for up to a third of the UN Security Council's membership. The EU Member States together are also the largest financial contributor to the UN system.<sup>5</sup> The EU is perceived by some as a driving force in the UN policy process. According to some observers it is often the case that nothing gets accomplished in many UN bodies if the Europeans are not on board.<sup>6</sup> However, in commenting on the EU's contribution to the United Nations, Taylor argued that, in the late 1990s, there was a "noticeable pattern of failure to achieve in the EU an acceptable consensus on foreign policy".<sup>7</sup> This thesis aims to explore whether the European Union has been an effective actor at the United Nations in negotiations in a specific field of so-called "new security": *human security*. The concept of human security refers to the security of individuals and civilian populations.

The European Union as a global player has attracted attention of a rising number of scholars. In the last few years, the scholarship on EU foreign policy in the context of the United Nations has been steadily growing. This is encouraging since, as recently as 2004, Jorgensen

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<sup>2</sup> Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament. The European Union and the United Nations: the choice of Multilateralism*, COM(2003) 526 Final, Brussels, 10/9/2003.

<sup>3</sup> European Council, *A Secure Europe in a Better World: European Security Strategy*, Brussels, 2003.

<sup>4</sup> European Union, *The Enlarging European Union at the United Nations: Making Multilateralism Matter*, Luxembourg, 2004.

<sup>5</sup> *Ibid.*, pp.6-7.

<sup>6</sup> See K.V. Laatikainen, "Assessing the EU as an Actor at the UN: Authority, Cohesion, Recognition and Autonomy", *CFSP Forum*, vol.2, no.1, 2004, pp.4-5.

<sup>7</sup> P. Taylor, "The Institutions of the United Nations and the Principles of Consonance: an Overview" in P.Taylor and A.J.R. Groom (eds.), *The United Nations at the Millennium: the Principals Organs*, London, Continuum, 2000, p.307.

and Laatikainen pointed out that “the EU at the United Nations has been an under-researched topic for years”.<sup>8</sup> In contrast, a very fertile scholarship on another major UN actor, the United States, and its relationship with the United Nations already existed.<sup>9</sup> The resurgence of academic interest in the EU as an actor in the United Nations has mirrored the concern of the European Union in strengthening its relationship with the UN. This thesis concentrates on a relevant topic and investigates the effectiveness of the European Union as an international actor. Yet, this thesis’ contribution is innovative not only in its analytical approach, but also in its examination of policy area of human security. First, this thesis uses a multilevel game approach to study the EU in UN negotiations. It addresses broader issues in the study of international negotiations and the discipline of International Relations by examining the behavior of the European Union, neither a state nor a typical international organization, in multilateral negotiations. Second, this thesis wishes to examine the EU’s contribution in support of the UN’s role as it seeks international agreements to improve the security, not of states, but of individuals, in advancing human security.

## **1.2 Research Question:**

The primary focus of this thesis is to investigate the effectiveness of the European Union as an actor at the United Nations in the policy area of human security. More specifically, this thesis analyzes the EU’s effectiveness in UN negotiations that aimed to design international conventions, treaties or other types of legal or political instruments “with the intent of strengthening existing international standards and norms in the field of human security.”<sup>10</sup> This thesis seeks to answer the following research question: *under what conditions is the EU an effective actor at the United Nations in the policy area of international human security?* (See Chapter 3)

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<sup>8</sup> K.E. Jørgensen and K. Laatikainen, *The European Union and the United Nations*, Second Pan-European Conferences. Standing Group on EU Politics, Bologna, 24-26 June 2004, p.20.

<sup>9</sup> See for example, R. Foot, S.N. Macfarlane, M. Mastanduno, *US Hegemony and International Organizations. The United States and Multilateral Institutions*, Oxford, Oxford University Press, 2003.

<sup>10</sup> See V. Rittberger, “Global Conference Diplomacy and International Policy-Making: The Case of UN-Sponsored World Conferences”, *European Journal of Political Research*, vol.11, no.2, 1983, p.171.



Additional questions that have framed this research include: Which actors are involved in negotiations on human security issues at the United Nations? Who are the EU actors engaged in the negotiations? Who represents the EU at the United Nations? Do EU Member States effectively coordinate their actions at the UN? If so, what type of coordination is involved? Another set of questions concerns the conditions which may influence the impact of EU as an actor at the UN. What types of factors influence the actors involved in negotiations in the United Nations? Are EU actors at the UN influenced by factors at other levels of negotiations? Do factors in other levels of policy-making influence the EU actors at the UN?

### **1.3 The European Union at the United Nations: A three-level game**

The European Union constitutes an interesting case to study for theorists: this thesis wishes to explore the distinctive nature of the EU as an actor at the United Nations using a multilevel game approach. Traditional systemic theories of international relations generally assume that states are rational “unitary” actors with fixed preferences and the ability to adopt various strategies to achieve their preferred outcomes.<sup>11</sup> It is difficult to consider the EU as a unitary actor in the international system, especially in the context of UN negotiations. First, the EU is not a member of the UN. EU Member States remain the main players. Second, various EU actors, as well as different levels of decision-making, need to be considered to understand the behaviour of the EU as an actor at the UN.

To identify and explain the conditions which might affect the EU’s effectiveness at the United Nations, one must undertake an analytical approach in which the complexity of the EU as a global actor is recognized and in which nuanced consideration is taken of the role of a variety of players and different levels of decision-making. This thesis argues that the two-level game metaphor<sup>12</sup> provides a valuable framework to examine the EU in UN negotiations on human security matters. It also contends that the study of the EU in human security negotiations involves not just a two-level game but rather a three-level game. This thesis

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<sup>11</sup> See, for example, K. Waltz, *Theory of International Politics*, New York, Addison-Wesley: McGraw-Hill, 1979 and R.O. Keohane, *International Institutions and State Power*, Boulder CO, Westview Press, 1989.

<sup>12</sup> R.D. Putnam, “Diplomacy and domestic politics: the logic of two-level games”, *International Organization*, vol.42,no.3, 1988, pp.427-460.

argues that three different levels of analysis - international level, EU level and domestic level - have to be considered to explain the EU's behaviour in human security negotiations at the UN.

The analytical framework of this research project draws on the "two-level game" metaphor and its view that international negotiations are the result of a multilevel process of decision-making which flows through a complex web of actors and institutions. This framework integrates various levels of decision-making to understand international bargaining and acknowledges that both domestic and international politics can influence international negotiations. The two-level game metaphor depicts international agreement as a process of strategic interactions in which actors must consider and influence the reactions and demands of actors both at home and abroad.<sup>13</sup> It argues that international negotiations should be considered as a two-level game, where each side is represented by a "chief negotiator" that plays at two levels: the international level (Level I) and the domestic level (Level II). At the international level (Level I), governments negotiate with each other to reach an agreement that takes into consideration domestic pressures. At the domestic level (Level II), different groups pressure the government to adopt certain policies. The two-level game implies that each game at each level is played simultaneously. Decisions taken at one level can have a direct effect on negotiations at the other level: strategies and outcomes at different levels of the game simultaneously affect one another. The crucial link between international negotiations and domestic politics lies in the necessity of "ratification": that is, any decision-process at the domestic level which is required to accept or implement an international agreement.<sup>14</sup> In order for international negotiations to be successful, the chief negotiator must not only reach an agreement at the international level but must also confirm that the agreement will be accepted, or ratified, at the domestic level.

The two-level game metaphor provides a useful framework to organise data and follow the interaction between different levels of negotiation. It also points to questions and potential hypotheses about the interactions between domestic and international negotiations. This thesis formulates its own hypotheses using insights from the Putnam's two-level game

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<sup>13</sup> A. Moravcsik, "Introduction: International Bargaining and Domestic Theories of International Bargaining" in P.B Evans, H.K. Jacobson and R.D.Putnam (eds.), *Double-Edged Diplomacy- International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993, p.15

metaphor, research on the EU as an actor at the UN and the literature on human security negotiations. Each of the hypotheses is tested across the case studies selected. Then, following a comparative analysis of the case studies, hypotheses are either accepted or rejected.

This research project will be the first attempt to use this metaphor as an analytical framework to examine international negotiations dealing with human security issues, and to study the EU as an actor at the United Nations. This thesis wishes to contribute to theory building in the field of International Relations. The two-level game approach is not a fully developed theory. As Moravcsik stresses, the metaphor to be used as a more formal theoretical model needs three sets of definitions and specifications: first, specifications of domestic politics; second, of the environment of international negotiations; third, of the negotiators' preferences.<sup>15</sup> This thesis aims to offer specifications and definitions of all three sets of influence on the interaction between international and domestic negotiations. It also seeks to offer specifications of constraints at the other level of analysis: the EU level.

#### **1.4 The European Union and Human Security at the United Nations**

With the end of the Cold War, “new” security concerns such as intra-state wars and gross violations of human rights became prominent items on the UN agenda. These concerns were direct consequences of dynamics changing within states, especially for former “clients” of the superpowers: several states began experiencing increasing instability and unpredictability. The victims of these conflicts and violations were mostly civilians. Issues of security now concerned civilian populations - individuals, ordinary citizens - rather than states. Some argued that “secure states” which were untroubled by contested territorial boundaries could still be inhabited by “insecure” people.<sup>16</sup> In the late 1990s, the language used to discuss security concerns evolved to reflect these new realities. The term “human security” was introduced to describe these new security matters and to emphasize the shift

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<sup>14</sup> Putnam, *op. cit.*, p.436.

<sup>15</sup> Moravcsik, *op.cit.*, p.23.

<sup>16</sup> See N. Thomas and W.T. Tow, “The Utility of Human Security: Sovereignty and Humanitarian Intervention”, *Security Dialogue*, vol.33, no.2, 2002, pp.177-192.

from a state concerned security to a people-centered approach to security.<sup>17</sup> Issues such as the use of landmines, the proliferation of small arms and light weapons, children and armed conflicts, as well as, human trafficking and organized crime were all considered part of these “new” security concerns.

Protecting individuals became a priority for the United Nations and of all its members including all EU Member States. The European Union’s strong commitment to strengthening the United Nations but also to human rights, development and humanitarian assistance prompted many both in the international community and in EU Member States to have high expectations<sup>18</sup> for the EU to become a significant actor in the area of human security. The EU’s involvement in the field of human security was considered crucial, especially as the United States, a dominant UN actor, appeared reluctant to commit to stricter regulations in this domain. This thesis examines how effectively the European Union is responding to these expectations.

While the EU has published various documents on its activities in specific human security issues<sup>19</sup>, few authors have examined the general involvement of the EU in human security initiatives. The EU’s contribution to the process to ban landmines and its role in the creation of the International Criminal Court are only two cases of human security negotiations which have been studied.<sup>20</sup> Conversely, a number of major works have recently been published on

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<sup>17</sup> See S.Lodgaard, *Human Security; Concept and Operationalization*, Geneva: Expert Seminar on Human Rights and Peace, December 2000.

<sup>18</sup> The unveiling of the Common Foreign and Security Policy (CFSP) has generated high expectations in and outside the European Union. However, expectations have since been significantly lowered. See C. Hill, “Closing the capabilities-expectations gap?” in J. Peterson and H. Sjursen (eds.), *A common Foreign Policy for Europe?* London, Routledge, 1993, pp.18-38. While this thesis does not investigate the idea of “capabilities-expectations gap”, it does consider both internal expectations (within the EU) and external expectations (from the UN).

<sup>19</sup> See European Commission, *The response of the European Union to the anti-personnel landmines challenge*, Luxembourg: Office for Official Publication of the European Communities, 2000.; and European Commission, *Small arms and light weapons. The Response of the European Union*, Luxembourg, Office for Official Publication of the European Communities, 2001.

<sup>20</sup> See, for example, D. Long, “The European Union and the Ottawa Process to ban landmines”, *Journal of European Public Policy*, vol. 9, no.3, 2002, pp.429-226. and M. Groenleer and L.van Schaik *The EU as a global actor: Case studies of the United Nations Framework Convention on Climate and the International Criminal Court*, Second Pan-European Conference Standing Group on EU politics, Bologna, 24-26 June 2006.

the United Nations and human security.<sup>21</sup> Most of these studies examine specific cases of UN initiatives in the field of human security. The overall conclusion is that despite the UN being a “natural and necessary forum for a human security agenda”<sup>22</sup>, much remains to be done to improve the protection and the security of individuals. This thesis fills a gap in the literature on the EU’s activities in the policy area of human security and contributes to the literature on the EU as an actor in international organizations.

It should be stressed that this thesis does not focus on the utility of the concept of human security.<sup>23</sup> While the thesis does not propose to engage with the debate on human security, it suggests using the term “human security” to label issues that share a number of characteristics and which, in recent years, have been at the centre of negotiations in the United Nations. Furthermore, this thesis does not examine whether the EU has (or should have) a human security approach in its foreign policy.<sup>24</sup> It does, however, explore how the European Union has responded to the challenges posed by human security. To limit the scope of the research, it is important to circumscribe what will be considered “human security” in the context of this thesis. But before doing so, it appears useful to offer a short review of the various definitions of the concept including how the concept has been used in the European Union.

### *What is Human Security?*

One of the most cited definitions of human security was proposed by the United Nations Development Program (UNDP) in 1994 in its *Human Development Report*. In this report the

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<sup>21</sup> See R. Thakur and E. Newman (eds.), *New Millennium, New Perspectives. The United Nations Security and Governance*, Tokyo, New York, Paris, United Nations University Press, 2000.; R. McRae and Don Hubert (eds.), *Human Security and the New Diplomacy*, Montreal, McGill-Queen’s University Press, 2001; E. Newman and O. Richmond, *The United Nations and Human Security*, Basingstoke, Palgrave, 2001; R. M. Price and M. W. Zacher (eds.), *The United Nations and Global Security*, New York, Palgrave Macmillan, 2004; and S.J. Maclean and D. R. Black (eds.), *A Decade of Human Security- Global Governance and New Multilateralism*, Aldershot, Hampshire, Ashgate, 2006.

<sup>22</sup> L. Axworthy, “Human Security: An Opening for UN Reform”, in R. M. Price and M.W. Zacher (eds.), *The United Nations and Global Security*, New York, Palgrave Macmillan, 2004, p.256.

<sup>23</sup> On the concept of human security see, R. Dannreuther, *International Security: The Contemporary Agenda*, Cambridge, Polity, 2007.

<sup>24</sup> On these two topics, see *inter alia*, M. Kaldor, M. Martin and S. Selchow, “Human Security: a new strategic narrative for Europe”, *International Affairs*, vol.83, no.2, 2007, pp.273-288.; and J. H.

term “human security” has two main aspects: first, safety from such chronic threats as hunger, disease and repression. Second, human security involves protection from sudden and hurtful disruptions in the patterns of daily life. The UNDP report also specifies four main aspects of this type of security. First, human security is a universal concern. Second, the components of human security are interdependent. Third, human security is easier to ensure through early prevention than later intervention. Fourth, human security is a “people-centered” approach. The Report also insists on the concepts of “freedom from fear” and “freedom from want”, terms which have been part of the UN vocabulary since the creation of the United Nations in 1945.<sup>25</sup> The UNDP also defined a list of several main categories of threats to human security. These are: economic security, food security, health security, environmental security, personal security, community security and political security.<sup>26</sup>

Several elements of this definition were subsequently used by other UN agencies as well as endorsed by the former UN Secretary-General, Kofi Annan.<sup>27</sup> While the definition proposed by the UNDP is recognized as useful in acknowledging the presence of new security concerns, it is also problematic as it encompasses such a diverse list of issues; it is difficult to distinguish areas that might be excluded from human security. Following the publication of the UNDP Report, the term gained popularity in the international arena and a profusion of definitions of human security emerged crafted by both states and scholar.

#### *Middle Powers and Human Security*

A number of states, mostly “middle-powers” were captivated with the idea of a “different” type of security and defined their own concept of human security, often based on the

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Matlary, “Much ado about little: the EU and human security”, *International Affairs*, vol.84, no.1, 2008, pp.131-143.

<sup>25</sup> United Nations Development Program (UNDP). *Human Development Report 1994*. New York, pp.22-25.

<sup>26</sup> *Ibid.*, pp.24-25.

<sup>27</sup> See, for example, K. Annan, *We the Peoples*, New York, United Nations, 2000. and S.N. Macfarlane and Y. F. Khong, *Human Security and the UN. A Critical History.*, Bloomington and Indianapolis, Indiana University Press, 2006, particularly Chapter 4.

initiatives they wished to pursue in their foreign policy.<sup>28</sup> The definition used by these states is often narrower than the UNDP definition. Canada and Japan are two countries that have put a strong emphasis on the concept of human security and are often cited when defining the concept of human security (see Table 1.1). The Canadian Department of Foreign Affairs and International Trade defined the term as “a people-centered approach to foreign policy which recognizes that lasting stability cannot be achieved until people are protected from violent threats to their rights, safety or lives”.<sup>29</sup>

Japan’s definition was much wider as it “comprehensively covers all the measures that threaten human survival, daily life, and dignity—for example, environmental degradation, violations of human rights, transnational organized crime, illicit drugs, refugees, poverty, anti-personnel landmines and [...] infectious diseases such as AIDS—and strengthens efforts to confront these threats.”<sup>30</sup> The commitment of both of these countries to human security translated itself into the creation of international initiatives to promote a people-centered approach to security.

First, Canada and Norway created in 1999 the Human Security network which focuses on practical responses to human security threats. Five EU Member States, Austria, Greece, Ireland the Netherlands and Slovenia - along with Chile, Costa Rica, Jordan, Mali, South Africa, Switzerland and Thailand - are all members of the Network. For the Network, human security, in its essence, means “freedom from pervasive threats to people’s rights, their safety or even their lives”. This network proposes to address the issues of the promotion of the convention on landmines, control of small arms and light weapons and the protection of children in armed conflict as well as the fight against transnational organized crimes, the struggle against HIV/AIDS and the protection of human rights.<sup>31</sup> Following a speech by UN Secretary-General Kofi Annan during the Millennium Summit, the Japanese government

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<sup>28</sup> On middle powers and human security, see R. M. Behringer, “Middle Power Leadership and the Human Security Agenda”, *Cooperation and Conflict*, vol.4, no.3, 2005, pp.305-342.

<sup>29</sup> Government of Canada, Department of Foreign Affairs, <http://geo.international.gc.ca/cip-pic/cip-pic/humansecurityagendaoverview-en.aspx>, accessed on 25/09/07.

On Canada and Human Security, see L. Axworthy, “Canada and human security: the need for leadership”, *International Journal*, vol..52, no.2, Spring 1997, pp.183-196/

<sup>30</sup> Government of Japan, Ministry of Foreign Affairs. *Diplomatic Blue Book 2004*, Chapter 3. <<http://www.mofa.jp/policy/other/bluebook/2004/chap3-c.pdf>> , accessed on 10/09/2007.

On Japan and Human Security, see B. Edström, “Japan’s foreign policy and human security”, *Japan Forum*, vol.15, Issue 2, June 2003, pp.209-225.

created the Commission for Human Security in 2001. For this independent Commission, human security is the protection of the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security also means protecting people from critical (severe) and pervasive (widespread) threats and situations, building on their strengths and aspirations. Human security must create “political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity”.<sup>32</sup> This definition maintains many of the elements found in the UNDP definition.

#### *Academic definitions*

As states were developing their own definition of human security, academics also began to provide their definitions of the concept. The definition and utility of this concept has generated great debate. Most discussions surround the *broad* versus *narrow* approach to human security. Proponents of the broad approach follow the UNDP’s outlook on human security. For example, Nef argued human security includes: environmental security, personal and physical security, economic security, social security, political security and cultural security.<sup>33</sup> Thomas also embraced a wide definition of the concept by arguing that human security means both fulfilling basic material need and achieving human dignity.<sup>34</sup> One of the main criticisms of the broad categorization of human security is that it is difficult to determine what is not considered to be human security. Other authors such as Krause and Macfarlane have promoted a much narrower definition of human security which focuses on protection from violent threats. They argue that a narrower definition can be useful both to

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<sup>31</sup> See Human Security Network website <[http: www.humansecuritynetwork.org](http://www.humansecuritynetwork.org)>

<sup>32</sup> Commission for Human Security, *Human Security Now*, New York, 2003, p.4. <<http://www.humansecurity-chs.org/finalreport/index.html>>

<sup>33</sup> Nef defines environmental, personal and physical security as “the right of individuals and communities to preservation of their life and health and to dwell in a safe and sustainable environment”; economic security as “the access to the employment and resources needed to maintain one’s existence, reduce scarcity, and improve the material quality of life in the community”; social security as “freedom from discrimination based on age, gender, ethnicity, or social status”; political security as “the right to representation, autonomy (freedom), participation, and dissent, combined with empowerment to make choices with a reasonable probability of effecting change”; and cultural security as “the set of psychological orientations of society geared to preserving and enhancing the ability to control uncertainty and fear” See J.Nef, *Human Security and Mutual Vulnerability: The Global Political Economy of Development and Underdevelopment*. Ottawa, International Development Research Centre, 1999.

<sup>34</sup> C.Thomas, “Introduction” in C. Thomas and P.Wilkin (eds), *Globalization, Human Security, and the African Experience*, London, Lynne Reinner Publishers, 1999, p.3.



set priorities in human security policy, and to establish a practical agenda for action.<sup>35</sup> Following a colloquium on the concept of human security, which included both proponents of broad and narrow definitions, Owen offered a “hybrid” definition. He argued that to narrow the concept of human security, only threats which seriously threaten lives should be included in the definition. For Owen, human security means “the protection of the vital core of all human lives from critical and pervasive environmental, economic, food, health, personal and political threats.”<sup>36</sup> While it does introduce the idea of using a threshold to delimit the concept, Owen’s definition includes six categories of threats to human security and thus remains a broad conceptualization of human security.

Departing from the debate on conceptualizations of “human security”, Paris argues that human security should be used as a label for a category of research, rather than as a useful framework of analysis. This label would characterize a broad category of research in the field of security studies that is concerned with military or non military threats – or both- to the security of society, groups and individuals, “in contrast to more traditional approaches to security studies that focus on protecting states from external threats.”<sup>37</sup> Paris suggests that scholars using human security as a label rather than as an analytical framework would not have to judge the validity of the concept per se, but rather analyze more specific questions which could be clearly defined. Furthermore, employing human security as a descriptive label would not suppose any normative agenda.<sup>38</sup> This thesis does not engage in the debate on the definition or the utility of human security. It does however fall within a category of works that examine negotiations on issues that are considered threats to the safety of individuals. In this sense, this thesis is about human security.

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<sup>35</sup> See Krause and Macfarlane’s respective contributions to a “Special Section: What is ‘Human Security’?” *Security Dialogue*, vol.35, no.3, 2004, pp.367-368 and pp.368-369.

<sup>36</sup> T. Owen, “Human Security – Conflict, Critique and Consensus: Colloquium Remarks and a Proposal for a Threshold-Based Definition”, *Security Dialogue*, vol.35, no.3, 2004, pp.373-387.

<sup>37</sup> R. Paris “Human Security. Paradigm Shift or Hot Air”, *International Security*, Vol.26, No.2, 2001, p.96 and p.99

<sup>38</sup> *Ibid.*, p.101.

**Table 1.1 Definitions of Human Security**

Definitions	United Nations	Middle Powers	Academic	The Barcelona Report
Broad Definitions	<p><i>Human security is safety from such chronic threats as hunger, disease and repression, and the protection from sudden and hurtful disruptions in the patterns of daily life.</i></p> <p>(UNDP 1994)</p>	<p><i>Human security means all the measures that threaten human survival, daily life, and dignity—and strengthens efforts to confront these threats</i></p> <p>(Japan)</p>	<p><i>Human security includes environmental, personal and physical security, economic security, social security, political security, and cultural security</i></p> <p>(Nef, 1999)</p> <p><i>Human security is the fulfillment of basic material needs and the achievement of human dignity.</i></p> <p>(Thomas, 1999)</p>	<p><i>Human security means individual freedom from basic insecurities.</i></p>
Narrow Definitions	<p><i>Human security places human beings rather than states at the focal point of security considerations. It emphasizes the complex relationships and often-ignored linkages between disarmament, human rights and development</i></p> <p>(UNIDIR)</p>	<p><i>Human security is a people-centered approach to foreign policy which recognizes that lasting stability cannot be achieved until people are protected from violent threats to their rights, safety or lives.</i></p> <p>(Canada)</p>	<p><i>Human security is the freedom from threat or use of violence</i></p> <p>(Krause, 2004)</p> <p>(Macfarlane, 2004)</p>	
As an Academic Label			<p><i>Human Security is a descriptive label for a type of scholarship which is concerned with military or non military threats – or both- to the security of society, groups and individuals.</i></p> <p>(Paris 2001)</p>	

The concept of human security has been an important feature of the foreign policy of several EU Member States including Austria, Finland and the Netherlands. The European Union, however, has never offered or endorsed a definition of human security. The European Security Strategy (ESS) does not include the term “human security”. However, it does acknowledge that security is a precondition for development. Following the adoption of this Strategy by the European Council in December 2003, discussions within the EU were centred on the implementation of this strategy. Javier Solana, the High Representative for the CFSP, commissioned a group of experts to examine Europe’s future contribution to global security. In September 2004 at the end of the Barcelona Summit, the group of experts, led by Mary Kaldor, Professor of Global Governance and Director of the Centre for the study of Global Governance, at the London School of Economics, presented to Solana the report entitled “A Human Security Doctrine for Europe” (the Barcelona Report).<sup>39</sup>

The Barcelona Report defines human security as freedom for individuals from basic insecurities caused by gross human rights violations. It adopts a broad definition of human security: genocide, systematic torture, inhuman and degrading treatment, disappearances, slavery and crimes against humanity, but also (though their legal status is less elevated) massive violation of the right to food, health and housing are all identified as forms of insecurity that threaten human security.<sup>40</sup> The Report presents a doctrine which includes three main elements (see Table 1.2): a set of seven principles; a “Human Security Response Force”; and a new legal framework to govern both the decisions to intervene and operations on the grounds. The study group advocated that, in the present global environment, the EU’s security policy should be built on human security rather than just on state security. In this report, the concept of human security is clearly linked to the EU’s security capability and the implementation of the European Security Strategy. The report emphasizes the “primacy of human rights in what distinguishes the human security approach from traditional state-based approaches”.<sup>41</sup> It also stresses that the “central goal of a human security strategy has to be the

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<sup>39</sup> Study Group on Europe’s Security Capabilities, *A Human Security Doctrine for Europe*, Barcelona, 15 September 2004.

<sup>40</sup> *Ibid.*, p.9.

<sup>41</sup> *Ibid.*, p.14

establishment of legitimate political authority capable of upholding human security”.<sup>42</sup> The report ends by suggesting that the “most appropriate role for Europe in the twenty-first century would be to promote human security”.<sup>43</sup>

**Table 1.2 Three Main Elements of a Human Security Doctrine**

<b>Seven Guiding Principles for Operations in Situations of Severe Insecurity</b>	<b>Human Security Response Force</b>	<b>New Legal Framework governing both decisions to intervene and operations on the grounds</b>
<ol style="list-style-type: none"> <li>1. the primacy of human rights;</li> <li>2. clear political authority;</li> <li>3. multilateralism;</li> <li>4. a bottom-up approach;</li> <li>5. regional focus;</li> <li>6. the use of legal instruments;</li> <li>7. the appropriate use of force</li> </ol>	<p>Composed of:</p> <ul style="list-style-type: none"> <li>▪ 15 000 men and women</li> <li>▪ At least one third would be civilian (police, human rights monitors, development and humanitarian specialists, etc)</li> </ul>	<p>Based on:</p> <ul style="list-style-type: none"> <li>▪ domestic law of host states,</li> <li>▪ domestic law of sending states,</li> <li>▪ international criminal law,</li> <li>▪ international human rights law,</li> <li>▪ international humanitarian law</li> </ul>

The Barcelona Report was welcomed by Javier Solana, who showed interest in studying more thoroughly the ideas put forward by the authors. However, it remains clear that the concept of human security as yet to be fully integrated in the EU’s foreign policy. Some have argued that even if the European Union is not using the term human security it is in practice already “doing human security”.<sup>44</sup> Others have stressed that “human security as a concept is very much part of EU foreign policy and overall it is becoming a more fundamental part of the motivation behind EU foreign policy”, but that “human security is but one motivation behind EU foreign policy”.<sup>45</sup> Kaldor, along with others, has argued that a European security policy should be founded on human security, on the primacy of individuals, not states. Human security can provide an “enduring and dynamic organizing frame for security action,

<sup>42</sup> *Ibid.*, p.15

<sup>43</sup> *Ibid.*, p.29.

<sup>44</sup> See Kaldor et al., *op.cit.*, p.274.

<sup>45</sup> R. Keane, “EU Foreign Policy Motivation: A Mix of Human Security and Realist Elements” in S.J. Maclean and D. R. Black (eds.), *A Decade of Human Security- Global Governance and New Multilateralism*, Aldershot, Hampshire, Ashgate, 2006., p.50.

a frame which European texts and practices currently lack.”<sup>46</sup> Kotsopoulos contends that the concept of human security can have internal and external benefits for the EU. First, human security could improve coherence within EU policy making by pressing the Council and the Commission to address problems of coordination and overlapping responsibilities in the EU’s external relations. Second, the use of “human security” could allow the EU to expand its prestige and moral standing, increase its international influence, and thus enhance the EU’s soft power. Finally, it can also contribute to the EU’s cooperation with the United Nations and to the goal of “effective multilateralism”.<sup>47</sup> Some remain more sceptical about the added-value of this concept for the EU. Matlary claims that “the problem is not that human security is not a good idea, but that interventions rarely happen for human security alone”. He concludes that “the EU may benefit from calling all its security policy ‘human security’, but if rhetoric promises more than policy can deliver, the ethical implications are grave”.<sup>48</sup> While human security has not yet developed into a guiding principle in the EU’s foreign and security policy, the debate on the utility of the concept of human security within the EU has help promoted the idea that the security of individuals should matter.

#### *Definition of Human Security*

Debates on the utility of the concept of human security, and even how it should be defined, are still ongoing. The purpose of this thesis is not to contribute to this debate. This thesis uses human security as a descriptive label for a specific field of activities of the United Nations. Yet, in order to limit the scope of the research, it is important to stress what will be considered “human security” in the context of this thesis. For the purpose of this thesis, human security will refer to the *freedom and protection from pervasive indirect and direct violent threats to people’s rights, personal safety or even their life*.<sup>49</sup> Furthermore, the definition offered by UNIDIR, the United Nations Institute for Disarmament Research will also be used to define “human security” in this thesis. According to UNIDIR, human security places human beings rather than states at the focal point of security considerations will also

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<sup>46</sup> See Kaldor et al., *op.cit.* p. 273 and M. Glasius and M. Kaldor, “Individual First: A Human Security Strategy for the European Union”, *Internationale Politik und Gesellschaft*, no.1, 2005, pp.62-84,

<sup>47</sup> J. Kotsopoulos, “A human security agenda for the EU: would it make a difference?”, *Studia Diplomatica*, vol. 60, issue 1, 2007, p.230.

<sup>48</sup> Matlary, *op.cit.*, p.143.

<sup>49</sup> This definition of human security is based on the Human Security Network’s definition of the concept. See website <<http://www.humansecuritynetwork.org>

putting emphasis on the complex relationships and often-ignored linkages between disarmament, human rights and development.<sup>50</sup> Thus this thesis will only examine the EU as an actor in negotiations dealing with issues that are violent threats to people's rights, personal safety or even life, and where the relationship between disarmament, human rights and development is acknowledged by the United Nations. This research project will not be about the EU's activities at the UN in promoting economic development, social justice, environmental protection or democratization. It will focus on violent threats to individuals.

### ***1.5 Thesis outline***

This thesis seeks to investigate the effectiveness of the European Union as an actor at the United Nations. This thesis analyzes three different case studies: 1) the ban on anti-personnel landmines, 2) the illicit trade in small arms and light weapons, 3) the involvement of children in armed conflicts. All of these cases can be considered human security negotiations as they address matters which are violent threats to people's rights, personal safety or even life and where the relationship between disarmament, human rights and development is acknowledged.

This thesis determines that the EU's effectiveness at the UN is limited by a number of conditions both internal and external to the EU. This thesis discovers that the approach of the European Union to human security issues at the United Nations is more about "managing expectations" than "effectively responding to high expectations". EU Member States appear to believe that the EU cannot achieve all of its objectives at the UN and cannot meet high expectations. Trying to meet these high expectations would, in fact, set the EU up for a failure. The European Union's overall approach in human security negotiations is more about securing some progress on issues discussed at the UN, rather than pushing for the adoption of stringent agreements. In this sense, it is difficult at the present time to consider the European Union a leader in the promotion of human security.

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<sup>50</sup> See UNIDIR website, [http://www.unidir.org/html/en/human\\_security.html](http://www.unidir.org/html/en/human_security.html), accessed on 10/09/2007

Chapter two provides the necessary background and analytical tools to understand and explain the EU's behaviour in human security at the United Nations. It begins by exploring the literature on the European Union's relationship with the United Nations. It then examines the EU as an actor in human security negotiations and shows that the EU is a multifaceted actor functioning in a multilevel environment. The chapter argues that different theoretical approaches put forward to study the EU as a global actor have failed to offer convincing explanations for the EU's behaviour in its external relations. It argues that a multilevel analysis is necessary to grasp the complexity of the EU as an actor at the UN in human security negotiations. It thus introduces the analytical framework based on the two-level metaphor which will be used in this thesis.

The third chapter introduces the research design used in this thesis. It begins by defining the dependent variable: "effectiveness". The concept of effectiveness is defined in two ways: internal effectiveness and external effectiveness. The EU is considered *internally* effective if the EU had a common position on (supports) a potential UN agreement regarding a specific human security issue. The *external* dimension of effectiveness referred to the success of the EU in achieving its objectives in the field of human security. Eight Independent variables which may affect the EU's effectiveness are also proposed in this chapter: the EU's commitment to multilateralism; the decision-making rules; the position of the United States; the Involvement of the Council Presidency; the Participation of the European Commission, the Support of France; Germany and the United Kingdom, a Unified position within EU governments, and the Influence of NGOs. Testable hypotheses are formulated regarding the relationship between the dependent variable and each of the independent variables. The chapter also introduces the methods used to answer the research question and discusses the cases selected to test the hypotheses put forward.

Chapters four, five and six analyze the case studies selected: the ban on antipersonnel landmines; the illicit trade in small arms and light weapons; and the involvement of children in armed conflicts. In each of the case studies, three-level negotiations are examined and particular attention is given to the EU's internal and external effectiveness. The case studies also track the conditions which may influence the EU's effectiveness. The three case studies selected display a variation in the EU's ability to be an effective actor.

Chapter seven offers a comparative analysis of all three case studies. All the hypotheses formulated in Chapter 3 are revisited. The analysis shows that there is a variation in the EU's internal and external effectiveness. The EU was internally effective in the small arms case. However, it failed to achieve external effectiveness. The EU's effectiveness in the landmines case was variable. While, the EU was not internally effective in the case of negotiations on the involvement on children in armed conflicts, it was externally effective. The comparative analysis is also crucial in determining under which conditions the EU is an effective actor at the United Nations in negotiations on human security issues. The comparative analysis confirms that a high level of involvement of the EU Presidency, a high level of French, German and British support, the presence of a unified position in EU governments and the presence of influence of NGOs/Coalition of NGOs are all conditions under which the EU is an effective actor at the UN in human security negotiations. Hypotheses on the EU's commitment to multilateralism, on the use on consensus in negotiations, and on the position of the United States are partially accepted. Only one hypothesis is rejected: a high level of participation of the European Commission does not affect the EU's effectiveness.

The final chapter focuses on further considerations on the two-level game metaphor as formal theoretical model and its potential implications for the study of the European Unions and the discipline of International Relations. The chapter also offer some thoughts on the future of a human security approach within the European Union.



## **The EU at the UN: a Multifaceted Actor in a Multilevel Environment**

### **2.1 Introduction**

This chapter aims to situate this thesis within the broader debate on the EU at the UN and the EU as a global actor. It also provides the necessary background and analytical tools to understand and analyze the EU as an actor in human security negotiations conducted at the UN. This chapter begins by exploring the literature on the European Community/European Union<sup>1</sup> at the United Nations, including the EU's focus on effective multilateralism. As this thesis examines the EU in a specific policy area - human security - this chapter then identifies the various players and forums, both in the UN and in the EU, which are involved in human security negotiations. This chapter then explores the literature on theorizing the European Union as a global actor and contends that the various theoretical and conceptual approaches that have sought to understand the EU as an international player have failed to appreciate the multifaceted nature of the EU's participation in the UN. It concludes by proposing a three-level game approach, based on Putnam's two-level game metaphor, as a useful analytical framework to answer the research question: *under what conditions is the EU an effective actor at the UN in the policy area of human security?*

### **2.2 The EU, the UN and Effective Multilateralism**

For years, the topic of the EU at the United Nations was studied primarily within the broader – and mostly legal - literature on the EU's participation in international organizations. The absence of major academic works on the EU at the UN prompted some political scientists to

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<sup>1</sup> Under the Maastricht Treaty, the European Community (EC) was included in a new structure, the European Union (EU). The term "EC" will be used to refer to the European Union prior to Maastricht and also to the designation of the EU's "first pillar".

argue that the topic had generally been neglected by the academic community.<sup>2</sup> Nevertheless, the literature on the EU as an actor at the United Nations has witnessed recently a sharp increase. The next sections will examine three major themes addressed in the literature on the EU and the United Nations: the legal status and representation of the EU at the UN; the EU in the General Assembly and the Security Council; and the notions of effective multilateralism and effective partnership.

### *Legal status and representation of the EU at the United Nations*

A number of legal studies have explored the relations between the European Union and international organizations, including the United Nations.<sup>3</sup> These studies have focused on how the legal status of the EC/EU affects the EU's participation in international organizations. They first observe the distinction between the legal status of the European Community and of the European Union. The European Community acquired a legal personality with the signature of the EC treaty; it can accede to an existing international organization and participate in the negotiations of an international treaty.<sup>4</sup> In contrast, the European Union has not yet been conferred a legal personality. This means that the EC, but not the EU, can become a member of an international organisation.<sup>5</sup>

The first contacts between the EU and the UN can be traced back to the beginning of the 1950s, when the European Coal and Steel Community made a formal agreement with the International Labour Organisation (ILO), one of the independent agencies of the United

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<sup>2</sup> J. Dedring, "Reflections of the coordination of the EU Member States in organs of the United Nations", *CFSP Forum*, Vol. 2, No. 1, 2004, p.3. K.E. Jørgensen and K. Laatikainen, *The European Union and the United Nations*, Second Pan-European Conferences. Standing Group on EU Politics, Bologna, 24-26 June 2004, p.20.

<sup>3</sup> See J. Sack "The European Community's Membership of International Organizations", *Common Market Law Review*, vol.32, 1995, pp.1227-1256.; E. Denza, "The Community as a Member of International Organizations" in N. Emiliou and D. O'Keeffe (eds.), *The European Union and World Trade Law after the GATT Uruguay Round*, Chichester, John Wiley & Sons, 1996, pp.3-15.; I. Govaere, J. Capiu, and A. Vermeersch, "In Between Seats: The Participation of the European Union in International Organizations", *European Foreign Affairs Review*, vol.9, no.2, 2004, pp.155-187., pp.155-187.; S. Marchisio, "EU's Membership in International Organization" in E. Cannizzaro (ed), *The European Union as an Actor in International Relations*, The Hague, Kluwer Law International, 2002, pp.231-260.

<sup>4</sup> Govaere et al., *op.cit.*, pp.156-157.

<sup>5</sup> If ratified by all Member States, the Lisbon Treaty will give a legal personality to the EU. See Article 46.

Nations. However, the relationship was only formalized in 1974. The previous year, the Federal Republic of Germany had acquired its UN membership, which meant that all EC member states were now full members of the UN. The European Community, however, was not granted full membership as Article 4 of the United Nations Charter stipulates that only states can become full members of the organisation.<sup>6</sup> Nonetheless, the General Assembly resolution 3208 (XIX) of 11 October 1974 did grant the European Communities an observer status at the UN. While observers have the right to access meetings, to speak within the General Assembly and to obtain official documentation, they are not allowed to vote or to participate in informal meetings and are not obligated to contribute to the UN budget.<sup>7</sup>

In contrast, the EU has been granted full membership in several of the UN's specialized agencies. For example, in 1991 the European Community became a member of the United Nations Food and Agriculture Organization (FAO), the lead rural development UN agency.<sup>8</sup> The FAO is an autonomous organization and therefore could modify its statutes to permit the EC to become a member alongside its Member states.<sup>9</sup> The EU can also participate in international conferences organized under the framework of the United Nations, but its status remains as an observer.<sup>10</sup> However, if the issues discussed at the conference fall within EC competence, such as trade or environmental issues, the EC may become a "full participant" of the conference as well as a party to the agreements negotiated. The EU has been a "full participant" in the UN Economic and Social Council (ECOSOC) Commission on Sustainable Development, at some UN General Assembly special session such as the Millennium Summit, and in some UN conferences such as Rio and Kyoto. In 2001, the EU even hosted UN conference on the least developed countries (LDCs) in Brussels.<sup>11</sup>

Even if it is not a full member of the UN, the European Union remains a highly visible actor at the United Nations. Thus, the question of the representation of the EU has also been studied. The task of representing the EU at the United Nation General Assembly (UNGA) is

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<sup>6</sup> P. Brückner, "The European Community and the United Nations", *European Journal of International Law*, vol.1, no.1, 1990, p.2.

<sup>7</sup> Marchisio, *op.cit.*, p.255.

<sup>8</sup> Govaere et al, *op.cit.*,p.165.

<sup>9</sup> *Ibid.*

<sup>10</sup> I.,Macleod, I.D. Henry, and S. Hyett., *The External Relations of the European Communities*, Oxford, Clarendon Press, 1996, pp.194-195.

the responsibility of the Member State which holds the Council Presidency. The representation of the European Union at the United Nations is, therefore, assumed by the Presidency's delegation to the UN, especially the Permanent Representative and the Head of Mission.<sup>12</sup> Each of the 27 Member States has its own permanent mission located in New York. Member States also have a permanent mission that is usually responsible for dealing with UN agencies based in Geneva, but also with other UN organizations such as the Conference on Disarmament and international organizations (for example the World Trade Organisation) based in Geneva.

Several authors have emphasized the central role of the Member State which exercises the Presidency. The delegation of the Presidency at the UN is responsible for the organizing and chairing of all EU coordination meetings at the UN. Throughout the years, a long-standing of practice of weekly meetings –coordination meetings- of Permanent Representatives of EU Member States at the UN has developed. Most Presidencies circulate a draft of agenda prior to each meeting to facilitate the flow of information. It must keep each member state fully informed of the outcomes of negotiations. Because the Presidency term is only six months, the contribution of manpower and time by the delegation of the Presidency is significant.<sup>13</sup> Frequent meetings between EU Member States also mean that the Presidency can obtain valuable support from other EU Member States, which each have their own network of contacts.<sup>14</sup> Even so, studies on the representation of the EU at the UN have emphasized that the Presidency remains one of the most central player in maintaining cohesion in the member states' actions.

Occasionally, when certain issues fall within the European Community pillar, the Commission may also be represented and may act on his own behalf. In matters relating to the Common Security and Foreign Policy, the “troika system” can also be used. According to this system, the Secretary General of the Council (who also acts as the High Representative for the CFSP), the Commission, and the next member state to hold the

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<sup>11</sup> European Commission, *European Union- United Nations Relations – The EU at the UN Overview*, Brussels, 2001.

<sup>12</sup> See Dedring, *op.cit.*, p.2.

<sup>13</sup> *Ibid.*

<sup>14</sup> J. Wouters, “The European Union as an Actor within the United Nations General Assembly” in V. Kronenberg (ed.) *The EU and International Legal Order: Discord or Harmony*, the Hague: T.M.C.Asser Press, 2001, p.381.

Presidency will assist the Presidency.<sup>15</sup> The European Commission was the first European institution to be represented at the UN. Following the acquisition of observer status in the General Assembly in 1974, the Commission opened an official delegation in New York. Other Commission delegations have since been opened in other cities that have UN headquarters including Geneva, Vienna, Rome, Paris and Nairobi. The delegation of the Commission aims to improve coordination between EU Members States and EU institutions working in the UN framework. It also supports the work of the Presidency. The Commission delegation is particularly active in the fields of trade, development, the environment and humanitarian affairs.<sup>16</sup> Farrell argues that “the general rule is that the European Commission has special responsibilities in areas where there is exclusive Community competence”, that is notably trade, agriculture, fisheries, and some areas of environmental and development policy.<sup>17</sup> In the area of development policy, a shared concurrent competence, Farrell stresses that the Commission has increased its profile at the United Nations and intensified cooperation with UN bodies. Following the publication of the Communication *Building an effective partnership with the United Nations in the fields of development and humanitarian affairs*<sup>18</sup>, the Commission concluded five partnerships with UN organizations, including the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR).<sup>19</sup> The Commission is also present at the regular meetings between representatives of the Council, the High Representative of the CFSP and the UN Secretariat.

In 1994, a liaison office of the Council Secretariat was opened in New York as a support structure to the CFSP. The liaison office provides information on UN activities to the High Representative for the CFSP and to the General Secretariat of the Council. One of the tasks of the office is to assist the Presidency and EU Member States in daily affairs at the UN. It also provides technical infrastructures and support for meetings of EU Member States. The liaison office has the mandate to contribute to ensure the consistency and coherence across

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<sup>15</sup> See F. Cameron “Building a common foreign policy. Do Institutions matter?” in J. Peterson and H. Surjsen (eds) *A Common Foreign Policy for Europe*, London, Routledge, 1998, pp.59-76.

<sup>16</sup> See M. Farrell, “EU Representation and Coordination within the United Nations” in K.V. Laatikainen and K.E. Smith (eds.), *Intersecting Multilateralism: The European Union at the United Nations*, London, Palgrave, 2006, pp. 38-39.

<sup>17</sup> *Ibid.*, pp.38-39.

<sup>18</sup> See European Commission, *Building an effective partnership with the United Nations in the fields of development and humanitarian affairs*, COM (2001)231 final, Brussels, 2/05/2001.

<sup>19</sup> Farrell, *op.cit.*, pp.39-40.

the rotating Presidencies.<sup>20</sup> The Council Secretariat also has an office in Geneva. The office was established in the late 1960s, primarily to monitor negotiations surrounding the General Agreement on Tariffs and Trade. The office is now responsible for following developments on the Human Rights Council and the Conference on Disarmament, but also the International Labour Organisation and the WTO. It also is active in UN agencies dealing with development, immigration and asylum issues.<sup>21</sup>

### *The EU in the UN General Assembly and the Security Council*

Whereas legal studies concentrated on studying the legal status and representation of the EU at the UN, political scientists have primarily studied the EU as an actor in two UN organs: the UN General Assembly (UNGA) and the UN Security Council (UNSC).

The first political studies about the EU as an actor in the UN focused on the EC's role in the UN General Assembly. With the creation of the EPC in the 1970s, a number of scholars began to show interest in the role of the European Community at the United Nations.<sup>22</sup> Lindemann qualified the UN as "one of the most important areas for European Political Cooperation".<sup>23</sup> It should be noted that with the creation of EPC, member states did not commit themselves to agree but only to consult on important questions of foreign policy.<sup>24</sup> However, EPC promoted the idea that member states consult each other on issues discussed at the United Nations.

The majority of studies on the EC at the UN during the EPC era focus on the voting behaviour of the EU Member States at the UN General Assembly. For example, authors such

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<sup>20</sup> See [http://www.europa-eu-un.org/articles/en/article\\_1933\\_en.htm](http://www.europa-eu-un.org/articles/en/article_1933_en.htm), accessed on 20/01/2008

<sup>21</sup> See [http://www.europa-eu-un.org/articles/en/article\\_1176\\_en.htm](http://www.europa-eu-un.org/articles/en/article_1176_en.htm), accessed on 20/01/2008

<sup>22</sup> See B. Lindemann, "European Political Cooperation at the UN: a challenge for the Nine" in D. Allen, R. Rummel and W. Wessels, (eds.) *European Political Cooperation: Towards a foreign policy for Western Europe*, London, Butterworth Scientific, 1982, pp.110-133; See also Brückner, *op.cit.*, pp.174-192; R. Foot, "The European Community's Voting Behaviour at the United Nations General Assembly", *Journal of Common Market Studies*, vol.17, no.4. 1979, pp.350-360.; L. Hurwitz, "The EEC in the United Nations: the Voting Behaviour of Eight Countries, 1948-1973" *Journal of Common Market Studies*, vol.3, no.3, 1975, pp.224-243.

<sup>23</sup> Lindemann, *op.cit.*, p.110.

<sup>24</sup> M.E.Smith, *Europe's Foreign and Security Policy – The Institutionalization of Cooperation*, Cambridge, Cambridge University Press, 2004, p.11.

as Foot, Hurwitz and Lindemann<sup>25</sup> surveyed the voting records of the EC member states during the first years of the European Communities and the EPC era. These authors noted that the EC members voting behaviour strongly converged during this period, except on more controversial issues such as disarmament. Foot argues that this avoidance of having split votes in UNGA resolution suggests that EPC did have an effect on the cooperation of EC member states at the United Nations.<sup>26</sup>

Progresses in co-operation at the United Nations between the member states were manifest during the EPC period. As early as 1971, consultation started between the EC member states on issues on the UNGA agenda.<sup>27</sup> The Presidency speaking on behalf of the EC Member States also became an established practice during the EPC period.<sup>28</sup> For Brückner, the creation of EPC encouraged the Member States to progressively “developed disciplines, in written and unwritten rules and procedures, with a view to improving their cohesion in the UN through various modes of political expression, in particular joint statements, voting, and common explanations of vote.”<sup>29</sup>

The introduction of the Common Foreign and Security Policy in 1992 raised not only the expectations of EU Member States, but also those of other states, that the EU should “speak with one voice” in the United Nations. The CFSP increased emphasis on the concept of coordination and consultation among the Member States in international forums such as the United Nations. Indeed, Article 16 of the Treaty on the European Union (TEU) provides that member states shall inform and consult one another within the Council on any matter of foreign and security policy of general interest to ensure that the Union exerts an effective influence. In the instance of international organizations and international conferences, Article 19 explains that member states shall coordinate their action and uphold the common positions.

The development and the created of CFPS revitalized the interest of scholars to study the EU at the United Nations. Johansson-Nogués, Wouters and Luif have all examined the voting

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<sup>25</sup> Foot, *op.cit.*, pp.350-360.; Hurwitz, *op.cit.*, pp.224-243.; Lindemann, *op.cit.*, pp.110-133.

<sup>26</sup> Foot, *op.cit.*, p.360.

<sup>27</sup> Brückner, *op. cit.*, pp.174.

<sup>28</sup> Foot, *op.cit.* “p.360.

<sup>29</sup> Brückner, *op.cit.* ., pp.176.

behaviour of the EU Member States in the UNGA since the creation of the CFSP.<sup>30</sup> These authors point out that from the beginning of the 1990s, there has been a significant increase in convergence among the EU Member States' voting behaviour within the UNGA.<sup>31</sup> The proposed explanations of this growing cohesion reveal interesting aspects to consider when examining the EU as an actor at the United Nations. For Wouters, this convergence is the direct consequence of extensive and constant efforts of coordination between the EU Member States before meetings occur at the United Nations. Wouters highlights that, even when the UNGA is not session, EU Member States missions meet almost on a daily basis to coordinate their activities. During the six months period of each Presidency, more than 600 meetings, on average, are organized during which not only ambassadors, but also deputy permanent representatives and EU experts discuss the issues on the UN agenda.<sup>32</sup>

Johansson-Nogués stresses another interesting factor which may explain this convergence in what she qualifies as "the gradual adjustment of French and British UN policy positions towards the EU mainstream."<sup>33</sup> Although France and the United Kingdom continue to have divergent positions on certain issues such as nuclear arms and decolonization, in general they maintain similar positions as the majority of EU Member States. For Johansson-Norgués, this is due to "the growing realization in Paris and London that on a majority of issues they increasingly stand to gain from a stronger and more coherent EU foreign policy."<sup>34</sup>

All the EU Member States – without any exception – have to agree to the direction and the wording of the statements that the EU will support in the UNGA; an increasing amount of time and effort is usually required to achieve this unanimous position. The EU has been criticized for this lengthy process of coordination.<sup>35</sup> EU officials have responded to criticism by making their position known before the UNGA sessions. Indeed, it has now become an established practice to circulate a document stating EU priorities to all UN member states

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<sup>30</sup> See E. Johansson-Nogués, "The Fifteen and the Accession States in the UN General Assembly: What Future for the European Foreign Policy in the Coming Together of the "Old" and the "New" Europe", *European Foreign Affairs Review*, vol.9, 2004, pp.67-92.; J. Wouters, "The European Union as an Actor within the United Nations General Assembly" in V. Kronenberg (ed.) *The EU and International Legal Order: Discord or Harmony*, the Hague, T.M.C.Asser Press, 2001, pp.375-404 and P. Luif, *EU Cohesion in the UN General Assembly*, Occasional Papers no.49, Paris, Institute for Security Studies, December 2003, 75 p.

<sup>31</sup> See Johansson-Nogués, *op.cit.*, p.73, Wouters, *op.cit.*, p.404 and Luif, *op.cit.*, pp.51-52.

<sup>32</sup> Wouters, *op. cit.*, p.382.

<sup>33</sup> Johansson-Nogués, *op.cit.*, p.73.

<sup>34</sup> *Ibid.*, p.74.

<sup>35</sup> See Wouters, *op.cit.*, p.383.



before the General Assembly begins.<sup>36</sup> Because EU positions are perceived as a balanced result of the EU's process of internal coordination and negotiations, other UN member states often consider these positions as possible compromise that would have a chance to attain consensus within the UNGA.<sup>37</sup> The EU welcomes this and considers it an opportunity to play a central role at the UN. Yet, as Luif argues, finding consensus in the UNGA can be less demanding than making and adhering to binding decisions on matters of international politics.<sup>38</sup> Indeed, the UNGA can only make recommendations and not binding decisions.

While most studies about the EU at UN have focused on the EU and the General Assembly, some scholars have explored the issue of the EU in the UN Security Council (UNSC). The EU does not have a specific status within the Security Council because the EU Member States participate as individual states. The EU is, nevertheless, well represented at the Security Council. Two of the five permanent members, France and the United Kingdom, are EU Member States. In addition, EU Member States are represented in three of the five<sup>39</sup> regional groups that provide the non-permanent members: the Western European Group, the Eastern European Group and the Asian Group (with Cyprus). EU Member States could theoretically hold more six of the fifteen seats at the Security Council.<sup>40</sup>

Article 19 of the Treaty on the European Union introduced several obligations for the EU Member States that are permanent and non-permanent members of the Security Council: EU Member States not only have to work together but also keep the other Member States fully informed. In addition, France and the United Kingdom, as permanent members, also have the obligation defend the positions and the interests of the European Union, but “without prejudice to their responsibilities under the provision of the UN Charter.” As Hill stresses, this section of the Article was introduced at the demand of France and the United Kingdom. While these two countries “had no objection to consulting, informing and coordinating with

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, p.404.

<sup>38</sup> Luif, *op.cit.*, p.52.

<sup>39</sup> The five regional groups are: the African Group, the Asian Group, The Latin American and Caribbean Group, the Western European Group and the Eastern European Group.

<sup>40</sup> J. Verbeke, “EU Coordination on EU Security Council Matters” in J. Wouters, F. Hoffmeister and T. Rhys, *The United Nations and the European Union: An Ever Stronger Partnership*, The Hague, TMC Hasser Press, 2006, p.52, fn.4

their EU partners”, they “saw their UN status as representing a higher calling and would not be bound even by existing commitments to common European positions”.<sup>41</sup>

Weekly “Article 19” consultations have been organized in New York to respect these obligations. The Permanent Representatives and Heads of Mission usually attend these meetings, which have evolved from as simple question-answer sessions to intense consultations allowing non-Members of the Security Council to state their opinions on issues to be debated in the UNSC.<sup>42</sup> In addition, since the end of the 1990s, the number of statements offered on behalf of the EU at the formal meeting of the UN Security Council (UNSC) has increased significantly.<sup>43</sup> In fact, since 1996, statements on behalf of the EU have been delivered by the Presidency at the Security Council. The High Representative for the CFSP and, on rare occasions, the European Commission have also been invited to give statements.<sup>44</sup> Even with this system in place, the current EU-coordination process in the Security Council as been described as “satisfactory”; most observers argue that the process could be improved through more systematic interactions between New York and Brussels.<sup>45</sup>

Most recent works that have examined the EU as an actor at the Security Council have considered how the EU coordinates its actions and speaks with one voice in this UN body. The role of the two permanent members,<sup>46</sup> the reform of the current Security Council membership, and the representation of states such as Germany and Italy within the Council<sup>47</sup> are key issues that have been recently explored. The idea of a single EU seat in the Security

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<sup>41</sup> C. Hill, “The European Powers in the Security Council: Differing Interests, Different Arenas” in K.V. Laatikainen and K.E. Smith (eds.), *Intersecting Multilateralism: The European Union at the United Nations*, London, Palgrave, 2006, p.57.

<sup>42</sup> Verbeke, *op.cit.*, p.55.

<sup>43</sup> Wouters, *op.cit.*, p.382.

<sup>44</sup> F. Hoffmeister and P.-J. Kuijper, “The Status of the European Union at the United Nations: Institutional, Ambiguities and Political Realities”, in J.Wouters, F. Hoffmeister and T. Ruys (eds.) *The United Nations and the European Union: an Ever Stronger Partnership*, The Hague, T.M.C. Asser Press, 2006, pp. 16-17.

<sup>45</sup> Verbeke, *op.cit.*, p.57.

<sup>46</sup> See Hill, *op.cit.*, pp.49-69.

<sup>47</sup> See E. Drieskens, D. Marchesi, B. Kerremans, “In Search of a European Dimension in the UN Security Council”, *The International Spectator*, vol.42, no.3, 2007, pp.421-430.; B. Fassbender, “The Better Peoples of the United Nations? Europe’s Practice and the United Nations”, *European Journal of International Law*, vol. 15, no.5, 2004, pp.873-882. ; J. Janes, “Between a Rock and Hard Places: Germany on the UN Security Council”, *American Institute For Contemporary German Studies at Issue Report*, 9 January 2003, [www.aicgs.org](http://www.aicgs.org), accessed on 12/11/2007.

Council has also been widely debated as a way of enhancing the EU's influence. However, even within the EU, the prospect of a single EU seat remains contentious.<sup>48</sup>

*The EU and the UN: effective multilateralism, effective partnership?*

A third focus of studies on the EU and the United Nations includes the notions of effective multilateralism and effective partnership in the relationship between the EU and the UN. This new academic interest follows the publication of several EU documents that have clearly stated the deep commitment of EU to multilateralism and to its partnership with the UN. As mentioned previously, the European Security Strategy (ESS) adopted in 2003 states that strengthening the UN is a European priority. According to the ESS, international cooperation with partners is a necessity; the EU “needs to pursue [its] objectives both through multilateral cooperation in international organisations and through partnership with key actors”.<sup>49</sup> The same year, the Commission reiterated the importance of multilateralism in EU-UN relations in a communication entitled *The European Union and the United Nations: The choice of multilateralism*. The Commission underscored that the EU's commitment to multilateralism is a defining principle of EU's foreign policy and describes the United Nations as the pivot of the multilateral system.<sup>50</sup> Furthermore, in April 2004, the European Council published *The Enlarging European Union at the United Nations: Making Multilateralism Matter*.<sup>51</sup> In this document, the European Council reaffirmed “the deeply rooted commitment of the European Union to make effective multilateralism as a central element of its external action, with at its heart a strong UN”.<sup>52</sup>

Cameron argues that the EU's attachment to multilateralism is not new. The EU's own history and system of intergovernmental negotiations has led the EU to being more willing to work through multilateral organisations. Cameron states that “the EU itself is an example of

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<sup>48</sup> See Drieskens et al., *op. cit.*, pp.423-424 and Hill, *op. cit.*, pp.56-61.

<sup>49</sup> European Council, *A Secure Europe in a Better World .European Security Strategy*, Brussels, 2003 p.14.

<sup>50</sup> Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament. The European Union and the United Nations: the choice of Multilateralism*, COM(2003) 526 Final, Brussels, 10/9/2003, p.3.

<sup>51</sup> European Union, *The Enlarging European Union at the United Nations: Making Multilateralism Matter*, Luxembourg, 2004.

<sup>52</sup> *Ibid.*, p.9.

multilateralism at work”.<sup>53</sup> In contrast, Jørgensen and Laatikainen argue the EU’s commitment to multilateralism is directly linked to the crisis of multilateralism that has been emerged in the last few years; they argue that recent transatlantic frictions regarding several global issues have prompted the EU to state their preference for a multilateral approach, especially in matters involving the United Nations. These authors, however, argue that this commitment is primarily a mixture of identity politics and of administrative reform proposals within the EU.<sup>54</sup>

For his part, Fassbender contends that the UN and the EU are intellectually and conceptually built on the same foundations. The EU is nearly required to support the global multilateral order that is the UN since the failure of multilateralism at the global level would provoke negative consequences on the European project.<sup>55</sup> However, Ortega argues the EU’s contribution to debate on the reform of the United Nations has, so far, been disappointing, especially considering that the EU repeatedly professes its commitment to effective multilateralism and says that the EU and the UN share a common language and common objectives. For Ortega, when it comes to the EU-UN partnership, “[t]he Europeans have ideas and the means; what is lacking is self-confidence, leadership and determination”.<sup>56</sup>

Two recent major academic works have explored the concepts of effective multilateralism and effective partnership between the EU and the UN. The first book to thoroughly examine the EU’s relationship with the UN, *The European Union at the United Nations- Intersecting Multilateralism*, was published in 2006.<sup>57</sup> In this book, “intersecting multilateralisms” refers to the study of the interactions between these two multilateral organizations. The book focuses on whether and how the EU can effectively act within the United Nations. It examines, *inter alia*, the impact of the collective action of the EU Member States at the UN on both organizations, the EU’s leadership within the UN, the compatibility between regionalism and universalism (including the UN system), and the EU’s role in promoting “effective multilateralism” (i.e. rendering international organizations and agreements more

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<sup>53</sup> F. Cameron, “After Iraq: The EU and Global Governance”, *Global Governance*, 2004, vol.10, no.2, pp.157-158.

<sup>54</sup> See K.E. Jørgensen and K. Laatikainen, *op.cit.*, pp.15-18.

<sup>55</sup> Fassbender, *op.cit.*, p.857-884.

<sup>56</sup> See M. Ortega, “Conclusion. UN Reform: as necessary as it is difficult” in M. Ortega (ed.) *The European Union and the United Nations- Partners in effective multilateralism*, Chaillot Paper no.78, Paris, Institute for Security Studies, p.100.

<sup>57</sup> K.V. Laatikainen and K.E. Smith (eds.), *The European Union at the United Nations. Intersecting Multilateralisms*, London, Palgrave, 2006.

effective).<sup>58</sup> It examines three main concepts: multilateralism, Europeanization<sup>59</sup>, and effectiveness. The book also focuses on the EU Member States, central actors in both the EU and the UN, and explores the EU's relations with the UN in four policy areas: security, economic and social development, human rights and environment. The various contributors to this book demonstrate that the EU has yet to become a more cohesive and consistent partner for the UN. The EU has been particularly successful in playing an active role in environmental affairs and, to a certain extent, in the promotion of human rights.<sup>60</sup> However, the EU has – until now – been unsuccessful in taking a formal lead in making this organization more effective.

*The United Nations and the European Union: An Ever Stronger Partnership*<sup>61</sup> is the second recent book that has focused on the EU's relationship with the UN. The book examines two broad questions: first, to what extent does the EU enjoy a formal status at the UN, is it able to speak with one voice and to influence the decision-making process at the UN; second, to what extent does the partnership between the EU and the UN promote the objectives and initiatives of the United Nations. The book has extensive discussion on different UN arenas and policy areas. The book examines how the EU-UN partnership has manifested itself in various UN organs (General Assembly, ECOSOC, and Security Council), programmes and specialized agencies (FAO, International Labour Organization, International Monetary Fund and the World Bank Group, UNESCO, World Health Organization). The book covers EU-UN cooperation in specific policy area: cooperation on refugees, human rights, sustainable development, and the environment. The EU's contribution on security issues including crisis management, counter-terrorism, and the UN Mission for Kosovo (UNMIK) is also analyzed.

The book illustrates that the coordination process between EU Member States has not only expanded but also diversified, covering an increasing number of policy areas. The EU has, therefore, increasingly spoken with one voice and exerted more influence; yet, EU-

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<sup>58</sup> *Ibid.*, pp.2-3.

<sup>59</sup> The authors focus on three different types of Europeanization: the development of institutional capacity at the European levels; the penetration of EU norms and policies in national systems of governance; the external diffusion of norms and form of political organization. See, p.9.

<sup>60</sup> See C. Damro, "EU-UN Environmental Relations: Shared Competence and Effective Multilateralism", pp.175-192, and K.E. Smith, "The European Union, Human Rights and the United Nations", pp.154-174. in K.V. Laatikainen and K.E. Smith (eds.), *The European Union at the United Nations. Intersecting Multilateralisms*, London, Palgrave, 2006.

<sup>61</sup> J.Wouters, F. Hoffmeister and T. Ruys (eds.), *The United Nations and the European Unions: An Ever Stronger Partnership*, The Hague, TMC Asser Press, 2006.

coordination at the UN requires important improvements.<sup>62</sup> Furthermore, the UN and the EU have proven that they can potentially be effective partners in multilateralism. Indeed, in specific areas such as environmental policy and human rights promotion, the EU has revealed itself as a key player and has displayed a promising capacity to be a reliable partner for the UN in achieving effective multilateralism.<sup>63</sup> Crisis management is another area where the EU has developed a closer cooperation with the UN. Several successful initiatives in this field have made crisis management “one of the most important and promising areas of EU-UN cooperation,”<sup>64</sup> an area where the EU could promote effective multilateralism.

### ***2.3 The EU and Human Security at the UN: A complex web of actors and forums***

The increasing amount of literature on the EU at the UN identifies the EU as a key- and, in some sense, growingly motivated- actor in the UN system. However, as mentioned in the previous chapter, the scholarship on the EU and human security at the UN remains scarce: there are no systematic studies of the EU’s role in UN negotiations dealing with human security matters. This section aims to provide the necessary background to understand the EU as an actor in human security negotiations at the UN. It explores what type of actor the EU is in human security negotiations. This section first introduces forums in which human security negotiations are conducted in the United Nations system. It then examines the main EU actors who may participate in negotiations on human security.

#### *Human security negotiations and the UN system*

Human security issues such as disarmament, arms control, and human rights are debated in various UN forums (see Figure 1). The Security Council and the UN General Assembly are

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<sup>62</sup> See J. Wouters and F. Hoffmeister and T. Ruys, “Epilogue: The UN and the EU- The Road to Partnership”, in J. Wouters, F. Hoffmeister and T. Ruys (eds.), *The United Nations and the European Unions: An Ever Stronger Partnership*, The Hague, TMC Asser Press, 2006, pp. 383-388.

<sup>63</sup> See H. Hazelzet, “The EU’s Human Rights Policy in the UN: An Example of Effective Multilateralism”, pp. 183-194.; and A. Maillet, “The EU: Greening the UN? Environmental Cooperation between the EU and the UN” in J. Wouters, F. Hoffmeister and T. Ruys (eds.), *The United Nations and the European Unions: An Ever Stronger Partnership*, The Hague, TMC Asser Press, 2006, pp. 211-227.

<sup>64</sup> J. Cloos, “EU-UN Cooperation on Crisis Management- Putting Effective Multilateralism into Practice”, in J. Wouters, F. Hoffmeister and T. Ruys (eds.), *The United Nations and the European Unions: An Ever Stronger Partnership*, The Hague: TMC Asser Press, 2006, pp. 259.

two main UN organs that have witnessed debates on human security since the late 1990s. The Security Council (UNSC) is a central organ at the United Nations with the P-5 (permanent members with veto) determining the main decisions and acting on behalf of this organization. Recently, the Security Council has dealt with numerous human security issues and has adopted resolutions on issues such as the protection of civilians in armed conflict, on women and peace and security, and on children in armed conflict.<sup>65</sup>

The United Nations General Assembly (UNGA) is a second forum wherein EU Member States can discuss human security issues with their UN partners. Resolutions and decisions adopted in the UNGA establish the agenda and are perceived as the expression of world opinion.<sup>66</sup> Disarmament issues are discussed in the First Committee of the UNGA (the Disarmament and International Security Committee); human rights in the Third Committee (the Social, Humanitarian and Cultural Committee). All EU Member States are members of the UNGA and, therefore, are repeatedly called on to vote on UNGA initiatives regarding human security issues. EU statements in the First and Third Committee are most often delivered by the Member State which holds the Presidency.<sup>67</sup>

Human security negotiations have also been conducted in two other UN bodies: the Conference on Disarmament and the Commission on Human Rights (now the Human Rights Council). Disarmament and arms controls questions are formally discussed within the Conference on Disarmament (CD). The CD is the international community's most prominent multilateral negotiating forum for disarmament agreements. It works on the basis of consensus and currently, is comprised of 65 members including several EU Member States.<sup>68</sup> The CD can adopt its own Rules of Procedures and its own agenda, but it must report to the General Assembly annually. If the majority of negotiations on disarmament are held at the CD, meetings on this matter are also frequently organised at UN headquarters in New York.

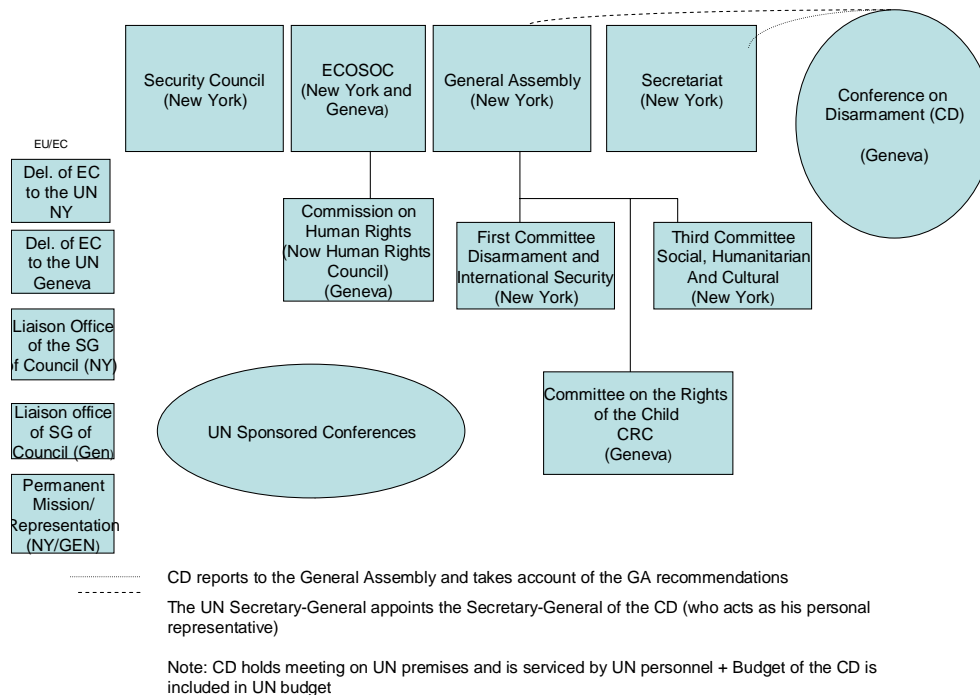
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<sup>65</sup>See Resolutions 1265 (1999) and 1296 (2000) on the protection of civilians in armed conflict; Resolution 1325 (2000) on women and peace and security; Resolution 1460 (2003) on children and armed conflict.

<sup>66</sup>Wouters, *op.cit.*, p.279.

<sup>67</sup>Hoffmeister and Kuijper, *op.cit.*, p.18.

<sup>68</sup>Austria, Belgium, Bulgaria, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Poland, Romania, Slovakia, Spain, Sweden and the United Kingdom are all current members of the CD. Several other EU states such as Denmark, Greece, Luxemburg and Portugal have also been granted observer status over the years.



**Figure 2.1 UN bodies dealing with human security issues and EU representations at the UN**

Human rights issues were previously debated within the now defunct UN Commission on Human Rights.<sup>69</sup> The Commission on Human Rights (CHR) was created in 1946 by the UN Economic and Social Council to promote respect of human rights. The Commission, composed of 53 members, met annually in Geneva and was mandated to examine, monitor and publicly report on human rights violations. It was also responsible for drafting international instruments relating to human and, therefore, to some human security issues.<sup>70</sup>

At the Conference of Disarmament and at the UN Commission on Human Rights, all EU Member States are represented by their own delegations, often composed of individuals

<sup>69</sup> The Commission on Human Rights was officially replaced by the Human Rights Council in March 2006. See <http://www.ohchr.org/english/bodies/hrcouncil/>, accessed on 10/11/2007.

<sup>70</sup> See P.R. Baerh, and L.Gordenker, *The United Nations at the End of the 1990s*, Houdmills, Basingstoke, Macmillan Press Ltd., 1999, pp.100-101



employed at foreign ministries.<sup>71</sup> While the European Commission enjoyed an observer status at the Commission on Human Rights<sup>72</sup>, this status is not granted at the Conference on Disarmament.

Lastly, the United Nations may also organize special conferences to address certain specific human security issues. Since its creation, the UN has developed a practice of organizing large global conference to attend to crucial global issues. The decision to convene a UN conference is often taken by one of UN decision-making bodies such as the UNGA or ECOSOC, often following a recommendation from the Secretary-General. The UN conference system is based on well-established practices regarding the proceedings and outcome of each conference, as well as the participating parties. In addition to states, various UN agencies, national agencies dealing with the issue covered by the conference, NGOs and the media may also be participants in UN conferences.<sup>73</sup>

#### *Human security negotiations at the European level*

The notion of human security entails that they are existing linkages between disarmament, human rights and development. Disarmament and arms control fall under the second pillar, the Common Foreign and Security Policy (CFSP).<sup>74</sup> In contrast, European development policy is formed by the Community's development policy and the Member States' policy in this field. As for human rights, Desgagné stresses that the "European Union's international action in the field of human rights is based on a mix of instruments, both in its Common Foreign and Security Policy (CFSP) and in its external relations covered by the EC Treaty."<sup>75</sup> However, as Smith argues, "[although] the EU's external human rights policy is carried out in the first and second pillar, its implementation through international

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<sup>71</sup> See Dedring, *op.cit.*, p.2.

<sup>72</sup> K.E. Smith, *op.cit.*, p.156.

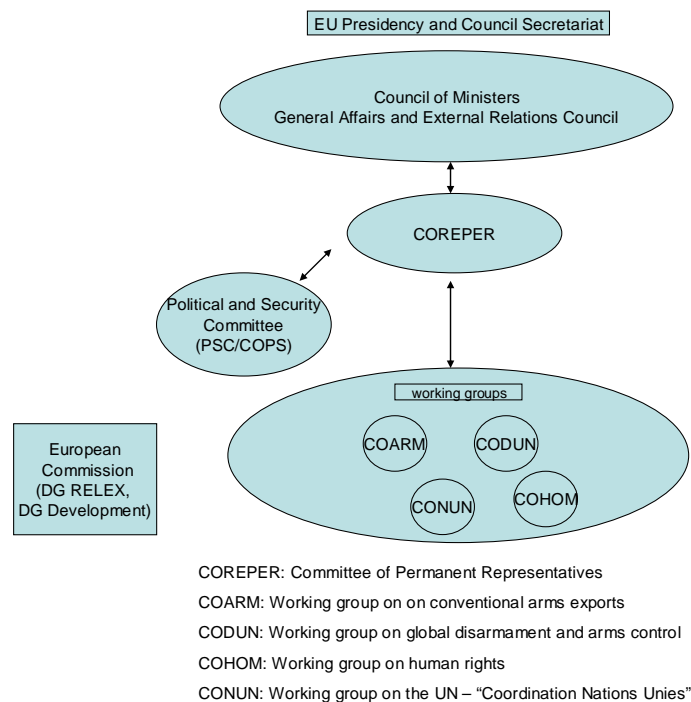
<sup>73</sup> See J. Foremand, "UN Conferences: Media Event or Genuine Diplomacy", *Global Governance*, 2, 1996, pp. 361-375.

<sup>74</sup> See R. Baratta, "Overlaps between European Community Competence and European Union Foreign Policy Activity" in E. Cannizzaro (ed.) *The European Union as an Actor in International Relations*, The Hague: Kluwer Law International, 2002, pp.51-75.

<sup>75</sup> R. Desgagné "European Union Practice in the Field of International Humanitarian Law: An Overview" in V. Kronenberger (ed.) *The European union and the International Legal Order: Discord or Harmony?*, The Hague, T.M.C. Asser Press, 2001, p.455.

organizations is a CFSP matter.”<sup>76</sup> As the next sections will show, various EU institutions are involved in negotiations that address human security issues (see Figure 2).

In the CFSP framework, the Council of Ministers and more specifically, the Council of General Affairs and External Affairs, which regroups the foreign affairs ministers from EU Member States, are key players. Meetings at the Council are chaired by the rotating Presidency. The General Secretariat of the Council also provides assistance. The Committee of Permanent Representatives (Coreper), which consists of Ambassadors of the EU Member States prepares the agenda and the work of the General Affairs Council. While Coreper I consists of deputy permanent representatives and focuses on technical matters, Coreper II is the body where more delicate political issues, including foreign affairs issues, are discussed.<sup>77</sup>



**Figure 2.2: EU decision-making bodies on human security issues**

<sup>76</sup> K. E. Smith, “Speaking with One Voice? European Union Co-ordination on Human Right Issues at the United Nations”, *Journal of Common Market Studies*, vol.44, no.1, March 2006, p.114.

<sup>77</sup> J. Lewis “The methods of community in EU decision-making and administrative rivalry in the Council’s infrastructure”, *Journal of European Public Policy*, vo.7, no.2 June 2000, p.264.

The Council is also assisted by working parties which carry out the preparatory work for the Coreper. In the Council, four working parties may discuss human security issues on the UN agenda. The first preparatory body, the CONUN (“Coordination Nations Unies”), is responsible for coordination between the EU Member States. It debates texts that will be submitted on behalf of EU.<sup>78</sup> A second working party is CODUN, the working group on global arms control and disarmament. This working group is comprised of senior disarmament officials from the foreign ministries and is assisted by the personnel from disarmament section of the Council’s General Secretariat. The Commission is also represented at each meeting of the working group by an official of the Security Policy unit of the External Relations Directorate General (DG RELEX).<sup>79</sup> The Working Party on Conventional Arms Exports, COARM, is also involved in negotiations on certain human security issues. Representatives from national foreign ministries, as well as one representative from the European Commission, are usually present at meetings of this working group.<sup>80</sup> Finally, the Council working group on human rights, the COHOM, composed of human rights experts from foreign ministries, examines issues debated in the Third Committee of the UNGA and the Commission on Human Rights.<sup>81</sup>

The Political and Security Committee (PSC), also known under its French acronym COPS, is another important player as it provides political advice to the Council. It is composed of national representatives at senior ambassador level based in member states’ Permanent Representations. It meets regularly and works closely with the High Representative for the CFSP. The Commission is also present at PSC meetings.<sup>82</sup> Although the PSC is now involved in discussions on human security issues, it previously focused on crisis management and defence-related issues. The PSC only had its first general discussion on arms control and disarmament in March 2002.<sup>83</sup>

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<sup>78</sup> Luif, *op.cit.*, p.11 and 16.

<sup>79</sup> D. Feakes, “The Emerging European Disarmament and Non-Proliferation Agenda on Chemical and Biological Weapons”, *Disarmament Diplomacy*, Issue No.65, July-August 2002, p.3.

<sup>80</sup> A. Hudson, *Case Study: EU Code of Conduct on Arms Exports*, Overseas Development Institute, [www.odi.org.uk](http://www.odi.org.uk), accessed 30/10/2007.

<sup>81</sup> Smith, *op.cit.*, footnote 9

<sup>82</sup> D. Spence “The Evolving Role of Foreign Ministries in the Conduct of European Union Affairs” in B. Hockings and D. Spence, *Foreign Ministries in the European Union*, Houndmills, Basingstoke, Palgrave Macmillan, 2005 p.31.

<sup>83</sup> Feakes, *op.cit.*, p.3

In addition to attending various meeting in the Council's bodies discussing UN-related human security issues, the Commission is directly involved in human security negotiations at the EU level. The Commission's Directorates-General (DGs) External Relations and Development are directly responsible for coordinating relations between the Commission and the UN. While human security issues such as disarmament and arms control remained CFSP issues, the emphasis on the important link between human security and development policy may suggest that the Commission's input at the UN in this area will intensify.

## **2.4 Analyzing the EU at the UN: A three-level game approach**

The European Union is undeniably a global actor.<sup>84</sup> However, it is a *different* kind of actor. The EU is neither a state, nor a typical intergovernmental organization. Furthermore, the EU's external relations consist of the "sum of what the EU and its member states do in international relations".<sup>85</sup> The previous sections have highlighted the multilevel nature of decision-making involved in the EU's participation in human security negotiations at the UN. While significant scholarship on the EU as a global actor has been produced in recent years<sup>86</sup>, the unique and multidimensional characteristics of the EU as an international actor continues to be a complex riddle for political analysts and theorists.

This section first shows that most theories that have attempted to theorize the EU as global actor do not offer convincing explanations of the EU's behaviour as an actor in the UN. A comprehensive assessment of the EU's effectiveness at the UN requires the use of a theoretical or analytical approach that recognizes the complexity of the EU as a global actor,

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<sup>84</sup> On this point see, K. E. Jørgensen, "Overview: The European Union and the World" in K.E. Jørgensen, M.A. Pollack and B. Rosamond, *Handbook of European Union Politics*, London, Sage Publications, 2007, p.508.

<sup>85</sup> See C. Hill, "Closing the Capability-Expectations Gap" in J. Peterson and H. Sjursen (eds.), *A common Foreign Policy for Europe?* London: Routledge, 1993, pp.18.

<sup>86</sup> See recent works by C. Hill and M. Smith (eds.) *International Relations and the European Union*, Oxford, Oxford University Press, 2005.; S. Marsh and H. Mackensteen, *The International Relations of the European Union*, Harlow, Pearson Longman, 2005.; W. Carlsnaes, H. Sjursen, and B. White, B. (eds.), *Contemporary European Foreign Policy*, London, Sage Publications, 2004; B. Tonra and T. Christansen (eds.), *Rethinking European Foreign Policy*, London, Sage Publications, 2004.; K. Smith, *European Foreign Policy in a Changing World*, Cambridge, Polity Press, 2003; R. Ginsberg, *The European Union in International Politics: Baptism by Fire*, Lanham, Rowman and Littlefield

with its various players and different levels of decision-making. The section then argues that the two-level game metaphor offers a useful starting point to develop an analytical framework to examine the EU at the UN. Finally, this section proposes a three-level game approach for analysing the EU's effectiveness in human security at the UN and answering the research question.

### *Theorizing the EU as a global actor*

The study of the European Union as an international actor has generated vigorous debates and has challenged both European integration and International Relations theorists.<sup>87</sup> First, European integration theories, such as neofunctionalism and liberal intergovernmentalism, are interested in development of general theories of economic and political integration.<sup>88</sup> However, as Pollack points out, "both neofunctionalism and its intergovernmental critique were limited in practice to the analysis of the European case and had little impact on the larger study of international relations".<sup>89</sup>

Neofunctionalists place emphasis on the process of socialisation and spill-over (from low politics to high politics) and the central role of supranational institutions. The neofunctionalist approach did not originally seek to explain the behaviour of the EU in international politics. Neofunctionalists have often struggled not only with the development of the EU's Common Foreign and Security Policy (CFSP), which is outside the framework of the European Communities and, in its nature, is intergovernmental, but also with the increasing role of the EU in global politics.<sup>90</sup> In contrast, Liberal intergovernmentalism has attempted to explain EU integration by focusing on interstate bargaining and on the

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Publishers, 2001; and C. Bretherton and J. Vogler, *The European Union as a Global Actor*, 2<sup>nd</sup> ed. London, Routledge, 2006.

<sup>87</sup> See B. Tonra and T. Christiansen "The Study of EU foreign policy: between international relations and European studies" in B. Tonra and C. Christiansen (eds.), *Rethinking European Foreign Policy*, Manchester: Manchester University Press, 2004, pp.1-9.

<sup>88</sup> F. Andreatta "Theory and the European Union's International Relations" in C. Hill and M. Smith, *International Relations and the European Union*, Oxford: Oxford University Press, 2005, p.23.

<sup>89</sup> M. Pollack "International Relations Theory and European Integration", *Journal of Common Market Studies*, 2001, vol.39, no.2, p.222.

<sup>90</sup> See J. C. Øhrgaard, "International Relations or European Integration: is the CFSP *sui generis*?", in B. Tonra and C. Christiansen (eds.), *Rethinking European Foreign Policy*, Manchester, Manchester University Press, 2004, pp.26-43.

predominance of domestic preferences.<sup>91</sup> This approach argues that another level of analysis (the domestic level) needs to be considered to understand European integration. In this sense, it does acknowledge the multilevel nature of the European Union. However, liberal intergovernmentalists have also encountered difficulties when explaining the EU cooperation on foreign policy. For example, liberal intergovernmentalists struggle to account for the introduction of qualified majority voting in the CFSP and for the fact that the “lowest common denominator” has not always been the privileged EU position.<sup>92</sup>

Second, mainstream International Relations theories, such as neorealism and neoliberalism, examine relations and cooperation between states in the international system. These systemic theories are generally concerned with producing models of states’ interactions and behaviour at the international level. These explanations of interstate relations focus on the pressures imposed by the international system and examine whether or not cooperation is possible between states. IR theorists who have taken interest in the development of the EU and its foreign policy have attempted to explain this singular form of cooperation and have focused on why EU Member States have voluntarily agreed to cooperate at the international level. Neorealists who argue that power struggle in international relations are a zero-sum game and that alliance between states are temporary<sup>93</sup> have offered explanations on why the EU is at times divided over issues of high politics. However, they have failed to explain why the EU has become a global actor. In contrast, neoliberalism focuses on the role of international organizations in facilitating cooperation between states by reducing uncertainty and mutual suspicions.<sup>94</sup> However, for neoliberals, “the EU counts as one of those international institutions that matter, but state power rules the game implying in turn that the EU is not conceived of as an international actor in its own rights”.<sup>95</sup>

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<sup>91</sup> See A. Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca, New York: Cornell University Press, 1998.

<sup>92</sup> See M. E. Smith, “Institutionalization, Policy Adaptation and European Foreign Policy Cooperation”, *European Journal of International Relations*, vol. 10, no.1, 2004, p.97.

<sup>93</sup> See, for example, J.J.Mearsheimer, *The Tragedy of Great Power Politics*, New York and London, Norton, 2001. and K. Waltz, *Theory of International Politics*, New York, Addison-Wesley, McGraw-Hill, 1979.

<sup>94</sup> See R. Axelrod and R. Keohane, “Achieving Cooperation Under Anarchy: Strategies and Institutions”, *World Politics*, vol.38, no.3, 1985, pp.226-254. and R.O. Keohane, *International Institutions and State Power*, Boulder CO, Westview Press, 1989.

<sup>95</sup> See Jørgensen, *op.cit.*, p.519.

Other alternative IR approaches, such as constructivism, have also been used to study the EU as a global actor. Constructivist studies of the EU have focused on the interaction between structure and agency, on the construction of interests and identities through bargaining and on the perception and actions of third parties. For constructivists, the EU as a global actor “remains in course of construction”.<sup>96</sup> Peterson argues that constructivism is now the “leading theory of European foreign policy”.<sup>97</sup> However, constructivism faces the difficulty of explaining how ideas or norms actually cause the behaviour of Member States to change in the context of international relations. They also struggle with proving that ideas are in the end more important than interests.<sup>98</sup>

The EU as a global actor represents a double challenge for IR theories: it is neither a state, nor a typical intergovernmental organisation. Furthermore, mainstream IR approaches assume that states are rational “unitary” actors with fixed preferences and the ability to adopt various strategies to achieve their preferred outcomes.<sup>99</sup> However, it is difficult to consider the EU as a unitary actor in the international system, especially in the context of UN negotiations. First, the EU is not a member of the UN and the EU Member States remain the main players. Second, as previous sections of this chapter have highlighted, various EU actors, as well as different levels of decision-making, must be considered to understand the behaviour of the EU as an actor at the UN. Indeed, during UN negotiations, an EU Member State must consider the positions of other states, but also recognize the positions of its EU partners, and negotiations at the domestic level. In fact, Elgström and Strömbeck argue that the “outcome of international negotiations involving the European Union is determined by bargaining at two levels: first, the member states have to agree among themselves on the Union’s [position]; second, the European Union has to reach an agreement with its partners.” These authors also stress that negotiations within the EU “are of course heavily influenced

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<sup>96</sup> See, for example, C. Bretherton and J. Vogler, *The European Union as a Global Actor*, London: Routledge, 1999.

<sup>97</sup> J. Peterson, “The EU as a Global Actor” in E. Bomberg, J. Peterson and A. Stubb (eds.), *The European Union: How does it work?*, 2<sup>nd</sup> ed., Oxford, Oxford University Press, 2008, p.218.

<sup>98</sup> See E. Bomberg, A. Stubb and J. Peterson, “Introduction” in E. Bomberg, J. Peterson and A. Stubb (eds.), *The European Union: How does it work?*, 2<sup>nd</sup> ed., Oxford, Oxford University Press, 2008, p.13 and Table 1.1.

<sup>99</sup> See, for example, K. Waltz, *Theory of International Politics*, New York: Addison-Wesley: McGraw-Hill, 1979 and R.O. Keohane, *International Institutions and State Power*, Boulder CO: Westview Press, 1989.

by domestic negotiations within each member states”.<sup>100</sup> The distinctive nature of the EU as a global actor as prompted a number of scholars to adopt a multilevel game approach based on Putnam’s two-level game metaphor to study the EU as a global actor.

*The two-level game metaphor: the interrelations of domestic and international negotiations.*

With his metaphor, Putnam proposed to address the shortcomings of the existing literature on the relations between domestic and international affairs.<sup>101</sup> Putnam argued that most scholars have examined international negotiations either in terms of domestic causes *on* international effects or of international causes *and* domestic effects. However, both approaches only represent “partial equilibrium” analysis and “miss an important part of the story, namely how the domestic politics of several countries [become] entangled via an international negotiations.”<sup>102</sup> This explains the need to “move beyond the mere observation that domestic factors influence international affairs and vice versa, and beyond the simple catalogues of instances of such influences, to seek theories that integrate both spheres, accounting for the areas of entanglement between them.”<sup>103</sup>

Putnam proposed a “two-level game” metaphor to explain the outcomes of international negotiations.<sup>104</sup> He argued that these outcomes are not exclusively the result of arduous negotiations at the international level, but should rather be viewed as the product of a multilevel process of decision-making that flows through a complex web of actors and institutions. The two-level game metaphor portrays international negotiations as “a process of strategic interactions in which actors simultaneously try to take into account of and, if possible, influence the expected reactions of other actors, both at home and abroad”.<sup>105</sup>

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<sup>100</sup> O. Elgström and M. Strömbeck, “The European Union as an international negotiator” in O. Elgström and C. Jönsson (eds.), *European Union Negotiations. Processes, Network and Institutions*, London: Routledge, 2005, p.119.

<sup>101</sup> R.D. Putnam, “Diplomacy and domestic politics: the logic of two-level games”, *International Organization*, 42,3, 1988, pp.427-460.

<sup>102</sup> *Ibid.*, p.430.

<sup>103</sup> *Ibid.*, p.433.

<sup>104</sup> *Ibid.*, pp.427-460.

<sup>105</sup> A. Moravcsik “Introduction: International Bargaining and Domestic Theories of International Bargaining” in P.B Evans et al. (eds.), *Double-Edged Diplomacy- International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993, p.15



Putnam argued that international negotiations should be considered as a two-level game, where each side is represented by a “chief negotiator”<sup>106</sup> that plays at two levels: the international level (Level I) and the domestic level (Level II). At the international level, governments negotiate with each other to reach an agreement that will consider domestic pressures (Level I). At the national level, different groups pressure the government to adopt certain policies (Level II). For Putnam, the crucial link between international negotiations and domestic politics lies in the necessity of ratification; the chief negotiator must not only reach an agreement at the international level, but must also make sure that the agreement will be ratified at the domestic level. Putnam defines “ratification” as “any decision-process at Level II [domestic level] that is required to endorse or implement a Level I [international] agreement whether formally or informally”.<sup>107</sup> Hence, it is not necessary to consider ratification in parliamentary terms or linking it to a formal voting procedure.

Putnam defines various constraints on negotiations at level I as “win-sets”. “Win-sets” are the sets of all possible Level I agreements that would have gained the necessary majority among the constituents when voted up or down, thus that would be ratified by domestic constituencies<sup>108</sup>. A number of determinants and circumstances may affect the win-set size. At the domestic level, the size may be influenced by national preferences, coalitions formed at this level, domestic divisions, and the cost, both real and perceived, of “no agreement.”<sup>109</sup> The size of the win set also depends on the political institutions present at Level II and the ratification procedures which are in place.<sup>110</sup> Strategies adopted by the negotiators at the international level (Level I) also directly affect the size of the win-set. Putnam argues that if the win-set is large, then the negotiations will have more chance to conclude an agreement at the international level. However, the ratification of this agreement at domestic level may be more difficult. If the initial win-set is smaller, then the negotiating latitude of the negotiators

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<sup>106</sup> See P.Evans, “Building an Integrative Approach to International and Domestic Politics” in P, Evans et al., *Double-Edged Diplomacy. International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993, p.399.

<sup>107</sup> Putman, *op.cit.*, p.436.

<sup>108</sup> *Ibid.*, p.437.

<sup>109</sup> *Ibid.*, p.445 and pp.442-443.

<sup>110</sup> *Ibid.*, p.448-449.

is limited. The state may achieve exactly what is wanted, but there is greater chance that the negotiations at the international level may cease before reaching an agreement.<sup>111</sup>

Putnam's metaphor is interesting because it implies that each game at each level is played simultaneously. Decisions made at one level can have a direct effect on the negotiations at the other level. This can be defined as "reverberation": strategies and outcomes at different levels of the game simultaneously affect one another.<sup>112</sup> Furthermore, one of the most significant assumptions of the two-level game is that an entity such as the "state" is not a "unitary actor" in international negotiations: the actors involved in the negotiations are different groups within the "state" groups with distinct interests and aims.<sup>113</sup>

The two-level game metaphor has been used to analyze several cases of international bargaining.<sup>114</sup> Putnam and other authors have primarily examined examples of international economic negotiations but other types of international cooperation have been analyzed using Putnam's metaphor.<sup>115</sup> However, to our knowledge, this research project will be the first to use this metaphor as an analytical framework to examine negotiations dealing with human security issues.

### *The EU in human security negotiations: a three-level game*

Several authors have applied Putnam's two-level metaphor to the analysis of the EU's external relations.<sup>116</sup> Manners and Whitman argue that the Putnam's two-level game

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<sup>111</sup> *Ibid.*, p.451.

<sup>112</sup> *Ibid.*, p.454.

<sup>113</sup> H. Milner, *Interests, Institutions, and Information: Domestic Politics and Information*, Princeton: Princeton University Press, 1997., p.253.

<sup>114</sup> See different cases in P.Evans, H.K. Jacobson and R.D. Putnam (eds.) *Double-Edged Diplomacy. International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993.; H. Milner, *Interests, Institutions, and Information: Domestic Politics and Information*, Princeton: Princeton University Press, 1997, p.253 and R. Paarlberg "Agricultural Policy Reform and the Uruguay Round; Synergistic Linkage in a Two-Level Game", *International Organization*, vol.51,no.3, 1997, pp.413-44.

<sup>115</sup> See Evans, et al. (eds.), *op.cit.*, for cases dealing with issues in North-South relations and security issues and issues in North-South relations including A. Moravcsik, "Armaments Among Allies – European Weapons Collaboration", pp.128-167.

<sup>116</sup> See H. Hubel "The EU's Three-Level Game in Dealing with Neighbours", *European Foreign Affairs Review*, 9, 2004, pp.347-362.; S. Meunier, "What Single Voice? The European Institutions

metaphor can be useful in explaining how the international and domestic spheres are significant in explaining the foreign policy pursued by an EU Member State. They emphasize that “this is a two-way street as domestic change, such as a change of government, can have an international impact, but also EU events, such as CFSP, can have a domestic impact.”<sup>117</sup>

If some authors have used the two-level game on its own,<sup>118</sup> most authors using a multilevel game metaphor have drawn on other conceptual frameworks to analyse the EU as an international actor.<sup>119</sup> Most often, when Putnam’s metaphor was used to study the EU in international negotiations, the two-level game metaphor was converted into a three-level game metaphor.<sup>120</sup> Putnam himself acknowledges that examining the European Union involves not just a two-level game, but a three-level game.<sup>121</sup> The three levels can be defined as follows: Level I remains the international level; Level II becomes the European Union level, where negotiations mainly take place between the Member States within the framework of the CFSP but may also involve other EU institutions; finally, Level III is the national/domestic level. A three-level game approach does not imply adding or

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and EU-US Trade Negotiations”, *International Organization*, vol.54,no.1, 2000, pp.103-135; S. Collinson, ““Issue-systems”, “multilevel games” and the analysis of the EU’s external commercial and associated policies: a research agenda”, *Journal of European Public Policy*, vol.6, no.2, 1999, pp.206-224; L.A. Patterson, “Agricultural policy reform in the European Community: a three-level game analysis”, *International Organization*, vol.51,no.1, 1997, pp.135-165., and J.S.Odell, “International Threats and Internal Politics. Brazil, the European Community and the United States, 1985-1987” in P.B. Evans, H. K. Jacobson and R. D. Putnam (eds.) *Double-Edged Diplomacy. International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993, pp.233-264.

<sup>117</sup> I. Manners and R.G. Whitman, “Introduction” in I. Manners and R.G. Whitman (eds.) *The Foreign Policies of the European Union Member States*, Manchester and New York, Manchester University Press, 2000, p.9.

<sup>118</sup> Patterson, *op.cit.*, pp.135-165

<sup>119</sup> See Meunier, *op.cit.*, pp.103-135 and Collinson, *op.cit.*, pp.206-224.

<sup>120</sup> It should be noted that some authors have opted to keep the two-level game metaphor viewing the EU as the “domestic level” See Y.Devuyst, “The European Community and the Conclusion of the Uruguay Round”, in C. Rhodes and S. Mazey (eds.) *State of the European Community, Vol.3, Building a European Polity?*, Boulder, Lynne-Rienner, pp.449-467; while others have proposed a double two-level game. See A.R. Young, “What game? By which rules? Adaptation and flexibility in the EC’s foreign economic policy” in M. Knodt and S. Princen (eds.) *Understanding the European Union’s External Relations*, London, Routledge, 2003, pp.54-71.

<sup>121</sup> R.D. Putnam, “Two-Level Games: The Impact of Domestic Politics on Transatlantic Bargaining” in H. Haftendorn and C. Tuschhoff, *America and Europe in an Era of Change*, Boulder, Westview Press, 1993, p.80.

superimposing three level of analysis. The main contribution of this approach is to stress the *interactions* between the three levels. This approach is thus an “interactive approach”.<sup>122</sup>

According to Putnam’s “two-level game” metaphor, each side is represented by a single leader or “chief negotiator” whose central aim is to reach an agreement that will be approved at the domestic level by the voters. In Putnam’s metaphor, the same negotiators are thus negotiating at the two levels. In the case of the EU, however, negotiators representing the EU may differ in various levels. Collinson rightly notes that the key EU negotiators at Level I and Level II are not always the same individuals who are playing at Level II and Level III. In addition, negotiations at Level I may involve more than one actor and each may represent different interests (as in the case of the member state holding the Presidency).<sup>123</sup> This variation of negotiator poses an analytical problem, but only if the dynamics of the three-level games are different from the two-level game. To be analytically useful, the three-level game metaphor must follow the same dynamics as the two-level game metaphor. The link between each level of negotiations must be clearly identifiable. The analysis of the various actors involved in human security negotiations presented in the previous section has revealed that the key negotiators who link the domestic, the EU level and the UN level are officials from foreign ministries. They are present at all three negotiating tables. Officials from the foreign ministries of EU Member States therefore constitute the interface between the three levels of negotiations.

One main criticism of the two-level game approach is that it is not a fully developed theory. Putnam fully acknowledges this point.<sup>124</sup> As Moravcsik has highlighted, for this metaphor to become a more formal theoretical model, definitions and specifications about domestic politics, the environment of the international negotiations, and about the negotiators preferences are needed.<sup>125</sup> Nevertheless, this thesis argues that a multilevel analysis based on the two-level game offers a valuable framework to organise the data and understand how domestic and international factors are intertwined in international negotiations. In this thesis, a three-level game analysis will thus be used to answer the research question. The three-level

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<sup>122</sup> Moravcsik, *op.cit.*, p.17.

<sup>123</sup> Collinson, *op.cit.*, p.219

<sup>124</sup> *Ibid.*, p.435.

<sup>125</sup> A. Moravcsik, *op.cit.*, p.23.

of analysis will be defined as follow: *Level I – International (or UN) level, Level II- EU level, Level III – Domestic level.*

## **2.5 Conclusion**

This aims of this chapter was to provide the necessary background and analytical tools to analyze the EU as an actor at UN in human security negotiations. It has demonstrated that the literature on the European Union's relationship with the United Nations has primarily focused on three themes: the EU's legal status and representation in the UN; the EU in the General Assembly and the Security Council; and the concepts of effective multilateralism and effective partnership. This chapter has also illustrated that the study of the EU in human security negotiations conducted at the UN requires the analysis of a complex web of actors and decision-making processes. This chapter has argued that the complexity and the unique nature of the EU as a global actor constitute a complicated puzzle for both theories of European integration and International Relations. Most theories have failed to appreciate the multifaceted and multilevel nature of the EU in international organizations. This chapter has shown that a multilevel approach, a three-level game, can provide a useful analytical framework to examine the EU at the UN. This approach will be use in this thesis to analyze the European Union's effectiveness in human security negotiations organized at the United Nations and answer the research question posed in this thesis. Before embarking on the analysis, it is important to clearly define the research design preferred in this thesis. The next chapter will thus discuss the research design used in this thesis.

## **EU effectiveness at the UN and Human Security Negotiations - Research Design**

### **3.1 Introduction**

The primary function of a research design is to ensure that evidence emerging from the project decidedly answers the main question of the research project.<sup>1</sup> This thesis seeks to identify the conditions under which the EU is an effective actor at the UN in human security negotiations. It aims to determine the relationship between the “effectiveness” of the European Union, the *dependent variable*, and various existing conditions in human security negotiations, the *independent variables*. This chapter introduces the research design used in this thesis. It begins by defining the dependent variable: “effectiveness”. Independent variables that may affect the EU’s effectiveness are then identified. This chapter then proposes testable hypotheses that consider the relationship between the EU’s effectiveness and conditions found in human security negotiations. These hypotheses indicate how *independent variables* may affect the *dependent variable*.<sup>2</sup> The hypotheses will be tested not only to explore whether a relationship exists between the concepts (the EU’s effectiveness and the various conditions), but also to examine the nature of the relationship. Finally, this chapter introduces the research methods used to answer the research question, a multiple-case study approach, discusses the cases selected to test the hypotheses, and reviews the methods used for data collection.

### **3.2 Dependent Variable: ‘effectiveness’**

The concept of “effectiveness” is often used when discussing the EU as a global actor but is rarely operationalized. Jørgensen stresses that it is difficult to evaluate the performance of the European Union and to determine the EU’s successes and failures in international

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<sup>1</sup> D. A. De Vaus, *Research Design in Social Research*, London, Sage, 2001, p.9.

<sup>2</sup> J.B. Johnson and R.A. Joslyn, *Political Science and Research Methods*, 3<sup>rd</sup> Ed., Washington DC, CQ Press, 1995, p.55.

politics.<sup>3</sup> The aim of this research project is not to rate the performance of the EU at the United Nations. It does not seek to evaluate either the ratification and implementation procedures or the effectiveness of the treaties or other agreements. This project, however, will examine if and when the EU can have an impact on human security negotiations. The effect of the EU as an actor at the United Nations is directly related to the extent to which the EU Member States decide to act collectively at the UN. Thus, the cohesion of the EU Member States must be considered. The definition of “effectiveness” that will be utilized for this research project will account for these different aspects.

Laatikainen and Smith have suggested four ways in which “effectiveness” can be defined in the context of EU-UN relations: internal effectiveness, external effectiveness, EU contribution to the UN’s effectiveness, and UN effectiveness.<sup>4</sup> The first two dimensions of “effectiveness” (internal effectiveness and external effectiveness) are useful in the context of this research project.<sup>5</sup> However, these definitions will be adapted to reflect the reality of the EU as an actor in the specific area of international human security. In addition, while this research project examines both the internal and external aspects of the EU’s effectiveness, the primary focus of this analysis will be the internal dimension that determines the external dimension. Indeed, this research project is based on the assumption that the EU’s external effectiveness depends, to a considerable extent, on its internal effectiveness.

#### ▪ *Internal Effectiveness*

Laatikainen and Smith argue that the “internal effectiveness” of the EU at the UN relates to the willingness of the EU Member States to act collectively at the UN through the EU (privileging EU action to independent national action). The EU is “internally effective” when

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<sup>3</sup> K.E. Jørgensen, “The European Union’s Performance in World Politics: How Should We Measure Success” in Z. Zielonka (ed.), *Paradoxes of European Foreign Policy*, The Hague, Kluwer Law International, 1998, pp.87-101.

<sup>4</sup> K.V. Laatikainen and K.E. Smith “Introduction” in K.V. Laatikainen and K.E. Smith (eds.), *Intersecting Multilateralism: The European Union at the United Nations*, London, Palgrave, 2006, p.10.

<sup>5</sup> Laatikainen and Smith’s third definition of effectiveness relates to the EU’s contribution to UN’s effectiveness and to the role of the EU in strengthening the UN’s capacity to act. The fourth definition relates to the UN’s effectiveness and influence in international relations. See *Ibid.*, p.10. Both definitions, while relevant to examine the EU at the UN, are not useful to answer the research question.

EU Member States reach an agreement on a common position and there is EU ‘output’. In this research project, the EU will be considered internally effective if the European Union has a common position (supports) a potential UN agreement regarding a specific human security issue. Certain EU Member States may not officially support the agreement; however, they may decide not to block the EU from endorsing the agreement. If the European Union supports the agreement (even if not all the Member States back the agreement), then the European Union will be considered internally effective. Statements that the Presidency delivers on behalf of the EU at the UN will be examined in each phase of the negotiations to determine if there is an EU position.

- *External Effectiveness*

Laatikainen and Smith argue that the “external effectiveness” of the EU at the UN involves the EU achieving its objectives. They also suggest that “external effectiveness” is related to the EU’s influence on other actors at the UN or on the general debate at the UN, to its role as a leader or “frontrunner”, and to the other states’ perception of the EU as a unitary and influential actor. Furthermore, Laatikainen and Smith stress that “external effectiveness” depends primarily on “internal effectiveness”. The two dimensions are thus linked.

The “external” dimension of “effectiveness” as defined by Laatikainen and Smith encompasses several aspects. To limit the scope of this research project, only the first aspect of Laatikainen and Smith’s definition of “external effectiveness” will be the focus of the analysis. The “external” dimension of effectiveness will refer to the success of the EU in achieving its objectives in the field of human security. All the initiatives supported by EU members in the area of human security have been towards the adoption of stricter regulations and constraining agreements. The EU, therefore, will be considered an “externally” effective actor if the outcome of the negotiations on a specific human security issue mirrors the EU’s general objectives in the area of human security. In other words, the external effectiveness of the EU will be evaluated based on whether the UN was able to achieve an agreement on a specific human security issue. It is reasonable to believe that a new agreement would either introduce stricter regulations or strengthen existing regulations.



The “external” effectiveness will not imply that the EU was responsible for introducing the issue on the UN agenda, or that EU was a “front-runner”.<sup>6</sup> In addition, it will not take into account if the agreement adopted at the UN achieves its desired end. This thesis recognizes that the EU may not be solely responsible for the adoption of an agreement at the UN, as other factors or players may explain the success or failure of UN negotiations. However, if the UN has failed to reach an agreement on a specific human security issue, then the EU has also failed to achieve its objectives.

### **3.3 Independent Variables: Possible Conditions**

Informed by the multilevel games literature and the studies on the EU as an actor in both the international sphere and at the United Nations, this section contends that several variables may influence the EU’s effectiveness. The previous chapter demonstrated that the analysis of the EU as an actor at the UN in human security negotiations requires an understanding of the ways in which the actors interact at various levels (international, EU, and domestic) and introduced an analytical framework based on Putnam’s two-level game metaphor. Following Putnam’s two-level game logic, a number of factors may have an impact on the possibility of an agreement at the international level. These factors can be a starting point to identify conditions that may influence the EU’s effectiveness in negotiations. If Putnam’s metaphor is useful in discerning conditions affecting the EU’s effectiveness, it has not been developed specifically to examine the EU as an actor in international negotiations. The literature on the EU as an international actor and as an actor at the United Nations is thus used to identify other potential conditions.

The following independent variables were defined using concept definitions. These definitions are useful as they facilitated the search for empirical evidence. In cases where a concept was too abstract or could not be observed, measurable indicators were selected; each

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<sup>6</sup> On the EU adopting a “front-runner” approach see Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament. The European Union and the United Nations: the choice of multilateralism*, COM(2003)56 final, Brussels, 10/09/2003.

indicator was chosen on the basis that it was easily observable.<sup>7</sup> Two types of measurement were used: nominal and ordinal measurements. In a nominal classification, concepts are grouped into a set of categories but do not necessarily follow a specific order. In contrast, an ordinal scale divides and ranks the various concepts and may use terms such as “low”, “medium” and “high”.<sup>8</sup>

### *Variables at the International Level*

Putnam argues that at the international level, prospect of an agreement depends on the preferences and strategies that the negotiators adopt. These preferences and strategies may be influenced by various motives, including the pursuit of chief negotiator’s personal conception of the national interest in the international context.<sup>9</sup> In human security negotiations at the UN, the EU does not have one chief negotiator negotiating on behalf of the 27 Member States. It is, therefore, difficult to identify the preferences and strategies of the EU as a global actor. Nevertheless, the literature on the EU-UN relations gives a clear indication of at least one EU preference and strategy when identifying the EU’s interests in the international context: the commitment to multilateralism. In addition to this variable, the literature on the EU as an actor in international negotiations points to other factors that may influence the EU’s effectiveness: the decision-making rules in international negotiations and the position of other dominant UN actors, including the United States.

#### *a) The Commitment of the EU to Multilateralism.*

A strategy “refers to the general orientations of the actions that the negotiators take to achieve their objectives.”<sup>10</sup> In recent years, the EU has repeatedly stated that it is committed to multilateralism.<sup>11</sup> The term “multilateralism” has various meanings. Multilateralism is

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<sup>7</sup> G. King, R.O. Keohane and S. Verba, *Designing Social Inquiry. Scientific Inference in Qualitative Research*, Princeton, Princeton University Press, 1994, p.110.

<sup>8</sup> See *Ibid.*, p.151 and P. Pennings, H. Keman and J. Kleinnijenhuis, *Doing Research in Political Science*, London, Sage Publications, 1999, pp.66.

<sup>9</sup> R.D. Putnam, “Diplomacy and domestic politics: the logic of two-level games”, *International Organization*, vol.42, no.3, 1988., p.457.

<sup>10</sup> G-O Faure and J.Z. Rubin, “Organizing Concepts and Questions” in G. Sjöstedt (ed.) *International Environmental Negotiations*, London, Sage Publications, 1993, p.19.

<sup>11</sup> See European Union, *The Enlarging European Union at the United Nations: Making Multilateralism Matter*, Luxembourg, Office for Official Publications of the European Communities,

associated with cooperation and may refer to the coordination of relations among three or more states on the basis of generalized principles of conduct.<sup>12</sup> The EU's attachment to multilateralism is not new. The EU's own history and system of intergovernmental negotiations has led the EU to be more willing to work through multilateral organisations.<sup>13</sup>

EU Member States may decide to interact with other UN member states and coordinate their relations within the UN system. In contrast, the EU Member States may prefer to adopt a more unilateral approach to relevant issues. Furthermore, EU Presidencies may also encourage EU Member States to speak in meetings to reinforce the EU common position and thus, increase the EU's effectiveness. If the EU Member States are strongly committed to collaborating with other states within the UN, the EU's effectiveness may be affected. An ordinal scale will be utilized to measure this variable (low, medium and high). The EU's commitment to multilateralism is an abstract concept; therefore, qualitative indicators will be considered: the direct contribution of EU Member States and of the European Union to negotiations will be evaluated to assess the EU's commitment to multilateralism. To evaluate the degree of EU's commitment to multilateralism, statements made by the EU and its Member States at the UN meetings will be analyzed.

In human security negotiations at the UN, the EU Member States remain the main players. Nevertheless, Member States may decide to participate individually and separately in the negotiations without emphasizing and reinforcing the position agreed within the EU. This will be defined as a *low degree* of commitment to multilateralism. However, the European Union can, if it chooses and through the Presidency, deliver statements in UN negotiations. In most UN organizations, EU Member States – without any exception – must agree on the direction and the wording of the statement that the EU will support.<sup>14</sup> The degree of the EU's commitment to multilateralism will be considered *medium* if an EU statement or contribution was presented by the Presidency and if the Member States mention the EU's

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2004; and European Council, *A Secure Europe in a Better World: European Security Strategy*, Brussels, 2003.

<sup>12</sup> J.G. Ruggie, "Multilateralism: the autonomy of an institution", *International Organization*, vol.46, no.3, 1992, p.568 and p.571.

<sup>13</sup> F. Cameron, "After Iraq: The EU and Global Governance", *Global Governance*, vol.10, no.2, 2004, pp.157-158.

position in their own national statement. Furthermore, the European Union may decide to submit an official contribution (for example, a working paper) to the negotiations. The Presidency, on behalf of the EU, would be responsible for delivering this formal contribution to the debate. If such a contribution is submitted and if Member States refer to this contribution in their own national contributions, then the degree of the EU's commitment to multilateralism will be considered to be *high*.

In summary, three different degrees of EU's commitment to multilateralism will be defined:

1. *Low Degree of EU's Commitment*: Only contributions of EU Member States, without mention of the European Union.
2. *Medium Degree of EU's Commitment*: Statements from the rotating Presidency that were given on behalf of the EU. Also, Member States mention the European Union in their national contributions.
3. *High Degree of EU's Commitment*: Specific EU contributions submitted to the negotiations, and Member States' statements/contributions refer to the European Union's contribution.

#### b) *Decision-making rules*

Decision-making rules used in negotiations are another variable which might influence the EU's effectiveness as an actor at the United Nations. UN meetings and conferences may differ in their organizational patterns and their rules of procedures including those related to decision-making.<sup>15</sup> Three main decision-making rules characterize international negotiations: some form of majority voting, unanimity or consensus.<sup>16</sup> The majority voting rule requires an agreement by some predetermined threshold. Under unanimity voting, all parties must agree with the outcome(s) of the negotiations. Consensus differs from majority voting and unanimity, as it is "neither quantitatively clear-cut nor formally defined" and usually entails

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<sup>14</sup> J. Wouters, "The European Union as an Actor within the United Nations General Assembly" in V. Kronenberg (ed.) *The EU and International Legal Order: Discord or Harmony*, the Hague, T.M.C.Asser Press, 2001 p.383.

<sup>15</sup> See J. Fomerand, "UN Conferences: Media Events or Genuine Diplomacy?", *Global Governance*, 2, 1996, p.362.

<sup>16</sup> See J.Jupille, "The European Union and International Outcomes", *International Organization*, vol.53, No.2, pp.409-425.

that there is no stated objection to the decision.<sup>17</sup> Consensus does not require unanimity on all points from all the member states participating in negotiations. It is generally an agreement on general objectives. Yet, it is interesting to note that negotiations at the UN, particularly in UN-sponsored conferences, only resume when there is a consensus that will not be challenged.<sup>18</sup> Hence, most often in UN negotiations, consensus is viewed as a type of informal unanimity.

Institutional decision-making rules at the international level can shape negotiations.<sup>19</sup> Each decision-making rule can facilitate international negotiations but can also create serious challenges. Majority voting rule involves a predetermined threshold and in UN negotiations usually follows the principle of “one state, one vote”. In negotiations using the majority voting rules, states can vote against or abstain but cannot veto or block the adoption of an agreement. Voting can also be introduced as a mechanism to overcome an impasse in negotiations based on consensus.<sup>20</sup> However, the major challenge with majority voting is the alienation of powerful minorities.<sup>21</sup> On the other hand, consensus, which aims to be a more “egalitarian procedure” as it recognizes the variation of power between nations,<sup>22</sup> not only constitutes a very high threshold in decision-making but often becomes an extremely slow process.<sup>23</sup> Achieving consensus often leads to lengthy and difficult negotiations in which the shadow of failure is always present, especially during the last hours of negotiations.

International decision-making rules can affect the EU’s achievement of a common position in international negotiations but also international outcomes. Jupille has examined various combinations of EU decision-making rules (unanimity and QMV) and international decision-making rules (unanimity, consensus and majority vote) to explain EU effects on international outcomes. Some of his observations are of interest for this research project. Jupille’s analysis

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<sup>17</sup> J. Depledge “The Opposite of Learning: Ossification in the Climate Change Regime”, *Global Environmental Politics*, vol.6, no.1, 2006, p.11.

<sup>18</sup> V. Rittberger, “Global Conference Diplomacy and International Policy-Making: The Case of UN-Sponsored World Conferences”, *European Journal of Political Research*, vol.11, no.2, 1983, p.178.

<sup>19</sup> See J. Depledge, *op. cit.*, p.8-13, Rittberger, *op.cit.*, p.178 and B. Buzan “Negotiations by Consensus: Developments in Technique at the United Nations Conference on the Law of the Sea”, *The American Journal of International Law*, vol.75, no.2, 1981, pp.324-348.

<sup>20</sup> However, the late introduction of a voting rule in negotiations is usually more a sign of negotiation failure than a step forward. See Rittberger, *op.cit.*, p.178.

<sup>21</sup> Buzan, *op.cit.*, p. 326.

<sup>22</sup> See *Ibid.*, p.327.

<sup>23</sup> See Depledge, *op.cit.*, 2006, pp.11-12 and Buzan, *op.cit.*, pp.341-342.

reveals that in the case combining EU unanimity (the rule most often applied in CFSP) and international consensus decision-making rules, the EU Member States, which are acting as free agents, will face greater difficulties in shaping the negotiations and obtaining their desired outcome.<sup>24</sup> In this case, the more “revisionist” or “reformist”<sup>25</sup> Member States will have to work harder to impose their preferences and to influence their EU partners, as they cannot rely on a rule such as the QMV to neutralize the voice of EU Member States supporting the status quo. Furthermore, under the consensus rule, the larger free-agents are usually the players in the best position to affect the negotiations. The “revisionist” EU Member States will also have to convince other non-EU larger free-agent states to adopt their point of view.

Jupille also points out that in international consensus situation, “the weight of fifteen, including states like Germany, the UK and France, [EU Member States] should be better able to block an international consensus or [more importantly for our case] forge one of their own.”<sup>26</sup> In the case of EU unanimity and international majority voting, the EU common position has the summed voting weight of all EU Member States. Jupille argues that the effects of this combination are nearly identical to those in the case of EU unanimity-international consensus rule combination; the difference is that the EU Member States are bargaining to have more votes.<sup>27</sup>

The decision-making rules used in human security negotiations at the UN are a second independent variable which may influence the EU’s effectiveness. A set of nominal categories will be used to measure this variable.

The nominal classification used for this variable is:

- *Majority voting rule*

- *Consensus rule*

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<sup>24</sup> Jupille, *op.cit.*, p.421.

<sup>25</sup> “Revisionist” or “reformist” states are states which demand important changes in the policies already in place.

<sup>26</sup> *Ibid.*, p.415

### c) *Position of the United States*

The position of the United States regarding a potential agreement will also be considered. Malone argues that “no country played a greater role in the design of, and in setting early aspirations for, the UN than did the United States”.<sup>28</sup> The United States has “a major influence both in shaping the agendas of the institutions where its interests are at stake and even, more fundamentally, in shaping and reshaping the actual character of the institutions themselves.”<sup>29</sup> Yet, one should recognize that “over the course of the 1990s, relations between the US and the UN deteriorated sharply, and US influence within the body inevitably waned”.<sup>30</sup> Nevertheless, the United States remains a dominant actor at the United Nations. The US is also the first partner of the European Union, but “the EU faces the twin challenges in speaking with one voice whenever possible and nudging back the United States back into the multilateral fold. [. . . T]he former is a necessary precondition for European effectiveness in addressing the latter”.<sup>31</sup> The American position (whether it supports or opposes) regarding a potential agreement at the UN may influence the EU Member States.

Groenleer and Van Schaik argue that in the cases of negotiations on the Kyoto protocol and on the International Criminal Court, the EU’s interaction with the United States may have had an impact on the EU speaking with one voice and may have prompted the EU Member States to adopt a common position at the UN. Groenleer and Van Schaik state that both these cases saw a strong opposition of the United States and the EU Member States were perhaps more willing to adopt a common position to counterbalance the US opposition.<sup>32</sup> Furthermore, most of the EU documents on the EU’s commitment to multilateralism were published following the Iraq crisis at the United Nations. This led to claims that the EU predilection for multilateralism at the United Nations is to contrast the recent increase of US unilateralism. The EU’s commitment to multilateralism may be directly linked to the crisis

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<sup>27</sup> *Ibid.*, p.414-415.

<sup>28</sup> D. M. Malone, “US-UN Relations in the UN Security Council in the Post-Cold War Era” in R. Foot et al. (eds.), *US Hegemony and International Organizations*, Oxford, Oxford University Press, 2003, p.90.

<sup>29</sup> R. Foot, N. Macfarlane and M. Mastanduno, “Conclusion: Instrumental Multilateralism in US Foreign Policy” in R. Foot et al. (eds.), *US Hegemony and International Organizations*, Oxford: Oxford University Press, 2003, p.271.

<sup>30</sup> Malone, *op.cit.*, p.90.

<sup>31</sup> Cameron, *op.cit.*, p.158.

<sup>32</sup> M. Groenleer and L.van Schaik *The EU as a global actor: Case studies of the United Nations Framework Convention on Climate and the International Criminal Court*, Second Pan-European Conference Standing Group on EU politics, Bologna, 24-26 June 2006, p.26

of multilateralism that has been transpiring in the last few years; they argue with the recent transatlantic frictions, the EU has felt the need to state their preference for a multilateral approach, particularly in the United Nations.<sup>33</sup>

The position of the US regarding a UN agreement is the third variable to be evaluated at the UN level. It may be difficult to assess whether the US supports or opposes an agreement as the American position may oscillate during the negotiations. To determine whether the US supports or opposes an agreement, the statements delivered by the American delegation at the beginning and the end of each phase of negotiations will be examined. The United States will only be considered to support the agreement if it is willing to endorse the version of the agreement that is on the negotiating table. If the United States generally supports the UN agreement but, because it has reservations on certain clauses, refuses to sign the agreement on the table, then US position will be considered as opposing the agreement. Furthermore, to simplify the analysis, the United States will be treated as a unitary actor, or a “black box”<sup>34</sup>: domestic negotiations in the United States will not be explored.

A nominal classification of the US position will be used:

*-United States supports the agreement*

*-United States opposes the agreement*

#### *Variables at the EU level*

The EU level is the second level of analysis. Human security issues at the EU level are discussed in the framework of the CFSP. Putnam’s approach indicates that the preferences of major actors at each of the levels can have an influence of the possibility of an agreement at the international level. Informed by the scholarship on the EU in international affairs, this

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<sup>33</sup> K.E. Jørgensen and K. Laatikainen, *The European Union and the United Nations*, Second Pan-European Conferences. Standing Group on EU Politics, no.293, Bologna, 24-26 June 2004. pp.15-18.

<sup>34</sup> This concept is borrowed from Meunier’s analysis of the EU in international commercial negotiations. See S. Meunier, *Trading Voices- The European Union in International Commercial Negotiations*, Princeton, Princeton University Press, 2005, p.61.



thesis argues that the preferences of three major EU actors involved in negotiations on human security issues should be examined. These three actors are the Presidency of the EU, the European Commission and the “trilateral axis” composed of France, Germany, and the United Kingdom.

*a) Involvement of the Council Presidency*

The first variable to be identified at this level of analysis is the level of involvement in human security issues on the part of the Member State that holds the Council Presidency. While several authors have stressed the central role at the United Nations of the Member State that has the Presidency<sup>35</sup>, the role of the Presidency at the EU level is even more decisive. The Presidency’s responsibilities include, *inter alia*, the initiation of policies, policy management in the field of foreign affairs, leadership in Council decision and the international representation of the Council and the European Union. The Presidency schedules meetings, decides on agendas, directs discussions, proposes compromises and suggests new proposals.<sup>36</sup> The rotating council Presidency is also in charge of chairing all the meetings of the Council of Ministers working groups as well as the European Council. The Presidency is, therefore, in an ideal position to promote certain of its priorities, including on CFSP matters. Not surprisingly, the Presidency often has a “stimulating role” in CFSP decision-making; it initiates most negotiations on the adoption of CFSP instruments such as Joint Actions and Common Positions.<sup>37</sup>

If the Presidency becomes involved, stimulates a debate at the EU level on human security policies and presses for the EU to adopt CFSP instruments, then this may have an impact on the EU’s effectiveness. To evaluate the level of involvement of the EU Member States holding the Presidency, CFSP policy instruments adopted by the Council and the Presidency will be examined.

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<sup>35</sup> See J. Dedring, “Reflections of the coordination of the EU Member States in organs of the United Nations”, *CFSP Forum*, Vol. 2, No. 1, 2004, p.2. and J. Wouters, *op.cit.*, pp.381-383.

<sup>36</sup> See D. Metcalfe “Leadership in European Union Negotiations: The Presidency of the Council” *International Negotiations*, vol.3, no.3, 1998 pp.413-434.

<sup>37</sup> See R.A.Wessel, *The European Union’s Foreign and Security Policy. A Legal Institutional Perspective*, The Hague, Kluwer Law International, 1999, p.89.

Five main CFSP instruments can be identified and can either be legal or political.<sup>38</sup> There are three legal CFSP instruments: Joint Actions, Common Positions, and Common Strategies. The two other instruments are politically (but non-legally) binding: Declarations and Conclusions of the General Affairs and External Relations Council.

Joint Actions and Common Positions were established by the Treaty on the European Union. Joint Actions focus on operational actions in which various resources, including human resource, financing and equipment are mobilized to achieve specific Council objectives.<sup>39</sup> Furthermore, once Joint Actions have been adopted, EU Member States are not allowed to support positions or act contrary to the Joint Actions. It is also required that Member States adapt their own national policies following the Joint Actions' guidelines.<sup>40</sup> Common positions elaborate the EU's approach to specific issues of geographic or thematic nature. The adoption of Common Positions may necessitate Member States to implement or modify their national policies to conform to the position agreed by the European Union on a specific issue.<sup>41</sup> Both of these instruments are adopted by the General Affairs and External Relations Council. They have the same formal and legal status and it is often unclear why Joint Actions are chosen over Common Positions and vice-versa. Indeed, while Joint Action involved specific concrete actions, they may also present a position. On the other hand, Common Positions can also demand additional concrete actions.<sup>42</sup> It should be noted that both Joint Actions and Common Positions often follow the adoption of resolutions at the UN Security Council and often include references to these UN resolutions.<sup>43</sup>

Common Strategies are a third legal CFSP instrument. They were introduced with the Treaty of Amsterdam. Common Strategies are recommended by the Council of Ministers, but

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<sup>38</sup> See D.C.Thomas, *The Institutional Construction of EU Foreign Policy: CFSP and the International Criminal Court*, prepared for presentation at the European Union Studies Association, Austin, Texas, March 31-2 April 2005.

<sup>39</sup> See also K.E. Smith, *European Union Foreign Policy in a Changing World*, Cambridge, Polity, 2003, p.44, Box 2.4.

<sup>40</sup> Wessel, *op.cit.*, p.155.

<sup>41</sup> Thomas, *op.cit.*, p.5.

<sup>42</sup> See, Wessel, *op.cit.*, pp.125-130. Wessel notes that "the criteria used for choosing the appropriate legal basis are far from transparent. Nevertheless two policy lines may be distilled from the decisions which have been taken. First of all, most Joint Actions are explicitly based on general guidelines of European Council. [...] Secondly, Joint Actions are not used to establish the reduction of economic and financial relations with third states or the imposition of an arms embargo, which decisions almost always follow a resolution of the United Nations Security Council.", p.130.

adopted unanimously by the European Council. Common Strategies allow “the European Council to have the power to call on all aspects of the life of the Union.”.<sup>44</sup> These strategies are adopted in areas where EU Member States have shared interests. They outline the EU’s aims, the duration and the means to be made available by the European Union and the Member States. Wessel notes that there is an “unconditional obligation for the Council indeed to come up with concrete CFSP decisions [such as joint actions or common positions] once the European Council has produced a Common Strategy”.<sup>45</sup> The Council of Minister is therefore responsible for the implementation of Common Strategies. The fact that the Council recommends Common Strategies to the European Council also demonstrates that Common Strategies address issues that have previously been discussed in the Council.

Two other instruments can be used to address specific CFSP: Declarations by the Council or Presidency, and Conclusion by the General Affairs and External Relations Council. Title V of the Treaty on the European Union does not include any provision regarding Declarations or Conclusions. They are therefore considered politically binding rather than legally binding on the Member States.<sup>46</sup> Nevertheless, the support of all Member States is required for their adoption. Declarations are general expressions of a political line the EU wishes to follow. They usually state the EU’s position vis-à-vis a specific international issue and may recommend that third states or other international actors act (or refrain from taking action) on a specific matters.<sup>47</sup> Declarations are usually issued by the Presidency of the Council on the behalf of the European Union, but may also be presented on behalf of the Presidency, of the European Union, by the Council and the Commission or even by the European Union together with a non-member States.<sup>48</sup> The General Affairs and External Relations Council adopts conclusions after the majority of its meetings. The Conclusions present the main results of the Council and emphasize certain decisions that the Council has adopted.

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<sup>43</sup> *Ibid.*, p.124.

<sup>44</sup> S. Nuttall, “Coherence and Consistency” in C. Hill and M. Smith, *International Relations and the European Union*, Oxford, Oxford University Press, 2005, p.104.

<sup>45</sup> Wessel, *op.cit.*, p.184.

<sup>46</sup> Thomas, *op.cit.* p.9.

<sup>47</sup> Wessels, *op.cit.*, p.186.

<sup>48</sup> See for example, *Declaration by the European Union and the United States on the Responsibilities of States and on transparency regarding arms exports*, Washington, 18 December 2000.

The level of involvement of the Presidency will be measured using an ordinal scale. Three various levels of involvement will be defined based on the political or legal nature of the CFSP instruments that have been adopted. If legally binding CFSP instruments are adopted by the Council, then the level of involvement of the Presidency will be considered to be higher. Furthermore, as previously mentioned, Common Strategies are adopted not by the Council, but by the European Council and require the Council to adopt further legally binding CFSP instruments, such as joint actions or common positions. The adoption of Common Strategies will thus be considered to be a higher level of involvement as this will necessarily entail the adoption of more CFSP instruments.

1. *-Low level of Involvement of the Presidency:* Adoption of Statements, Declarations, Conclusions (politically binding CFSP instrument).
2. *-Medium Level of Involvement of the Presidency:* Adoption of Joint Actions and Common positions
3. *-High Level of Involvement of the Presidency:* Adoption of EU strategy that require the adoption of Joint Actions and Common positions.

#### *b) Participation of the European Commission*

The European Commission is responsible for the European Community actions in the field of humanitarian and development assistance which are considered intrinsic parts of human security. Furthermore, the DG for external relations usually deals with policy-making on external human rights; DG development also manages development programmes and policies which might directly affect human rights.<sup>49</sup> The DGs responsible for development, for humanitarian assistance, and for external relations are all actors from the European Commission whose work could be affected by the outcomes of human security negotiations.

Human security negotiations at the UN, however, have dealt with issues regarded as CFSP issues such as disarmament and arms control. In addition, although the EU's external human rights policy can be both a first and second pillar issue, the implementation of this policy through international organizations such as the United Nations remains in the second pillar.

Nevertheless, because of its responsibility for many activities in the field of human security, the Commission has begun to increase its participation to the debate on human security issues at the EU level. As a recent ruling of the European Court of Justice (ECJ)<sup>50</sup> demonstrates, the Commission increasingly argues that human security issues, such as the campaign against the proliferation of small arms and light weapons or the fight against landmines, have become an integral part of the policy of development cooperation and should fall within the scope of the competences conferred on the Community in that field. As the Commission is gradually more involved in addressing human security challenges, the level of participation of the Commission may influence the EU's effectiveness in human security negotiations.

The Commission may contribute to negotiations in various ways. Commissioners may make statements to encourage Member States' to achieve a common position at the EU level and/or support the agreement being negotiated at the international level. The Commission may increase its participation by producing communications (COM documents) to indicate its intended course of action on the issue being considered at the international level. It may also organize international events to raise awareness on specific issues and publish reports or other material specifically designed to be distributed during UN meetings. The Commission may also cooperate with the Presidency. In fact, the Commission's role in human security negotiations may depend on the attitude and capability of the member state who holds the Presidency. For example, smaller states with fewer resources might encourage the Commission's involvement and welcome its support.<sup>51</sup> Furthermore, while the European Commission enjoys observer status in the Commission on Human Rights (now the Human Rights Council), its contributions are often dependent upon the Presidency's inclination to let it participate in the meetings.<sup>52</sup>

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<sup>49</sup> M. Van Reisen, *Invisible Children? Towards the Integration of Children's Rights in EU and Member States' Development Co-operation Policies*, Stockholm: Save the Children Sweden, 2002, p.54.

<sup>50</sup> See ECJ Case C-91/05, *Commission v Council*, 20 May 2008, OJ C 115, 14.05.2005, p. 10.

<sup>51</sup> M.E. Smith, *European Foreign and Security Policy- The Institutionalization of Cooperation*, Cambridge, Cambridge University Press, 2004, p.160.

<sup>52</sup> K.E. Smith. "The European Union, Human Rights and the United Nations" in K. V. Laatikainen and K.E. Smith (eds.), *The European at the United Nations: Intersecting Multilateralisms*, Houndsmills Basingstoke, Palgrave Macmillan, 2006, p.155.

The European Commission has become increasingly involved in the promotion of human security. It is thus reasonable to test whether the level of participation of the Commission influence the EU's effectiveness in human security negotiations. An ordinal scale will be used to measure the Commission's level of participation:

1. *-Low level of participation:* Statements by EU Commissioners
2. *-Medium Level of participation:* Statements by EU Commissioners and Adoption of Communications from the Commission (COM documents)
3. *-High Level of participation:* Statements by EU Commissioners, adoption of COM documents and cooperation with the Presidency (production of material/reports for the UN conferences, organization of international events).

*c) Support of France, Germany and the United Kingdom*

France, Germany and the United Kingdom are dominant players in EU foreign policy. Their support for or opposition to an agreement in the field of human security can be extremely influential.<sup>53</sup> Regarding CFSP issues the larger EU Member States are likely to negotiate among themselves before coming to the negotiating table at the Council.<sup>54</sup> France, Germany and the United Kingdom, the “trilateral axis”, have also been described as a *directoire* that is a “leadership group in the EU decision-making process that takes decisions affecting the interests of other EU Member States and this without their participation”.<sup>55</sup> Furthermore, sometimes the EU's final decision on a particular issue appears to mirror the outcome of discussion made within the *directoire*.<sup>56</sup> The French, German and British support for the agreement on the negotiating table may thus have an impact on the negotiations at the EU level.

These three countries may also influence whether there is “EU output” at the UN on a specific issue. Compared to other EU Member States, France, Germany and the United

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<sup>53</sup> See D.Long and L. Hindle, « Europe and the Ottawa Process : an Overview » in M. Cameron., R. J. Lawson and B.W. Tomlin (eds.), *To Walk without Fear- The Global Movement to Ban Landmines*, Don Mills, Ontario, Oxford University Press Canada, 1998 p.253.

<sup>54</sup> C. Gegout, “The Quint: Acknowledging the Existence of a Big Four-US *Directoire* at the Heart of the European Union's Foreign Policy Decision-Making Process”, *Journal of Common Market Studies*, vol.40, no.2, 2002, pp.331-332.

<sup>55</sup> *Ibid.*, p.332.

Kingdom all have a “special” relationship with the United Nations. France and the UK chiefly differentiate themselves from other EU Member States by their permanent membership in the Security Council. These two Member States have a “privileged access to the other members of the P-5”<sup>57</sup> and can therefore exert their influence on important players at the United Nations. Hill argues that because France and the United Kingdom are the “key players in the European foreign policy cooperation they are naturally pushed together”<sup>58</sup>, but French and British positions diverge on a number of human security issues. Although not a permanent member in the Security Council, Germany also has a close relationship with the United Nations. In 2006-2007, Germany was the third largest contributor to the regular budget (with a share of 8.6%), far ahead of the UK (6.1%) and France (6.0%).<sup>59</sup> Germany has also actively campaigned to become a permanent member of the Security Council. The position of these three actors may therefore influence the EU’s effectiveness as an actor in human security negotiations at the UN.

To measure the level of support of these three countries for a potential agreement, EU initiatives on human security discussed at the UN will be examined. The analysis will determine whether these initiatives were championed by one, two or all three of these Member States. Furthermore, these states will only be considered to support the agreement if they support the agreement without any reservations.

An ordinal classification will be used to examine this variable:

1. *Low Level of Support*: France or Germany or the United Kingdom champions EU initiatives that support the potential UN agreement on human security issues and do so without reservation.
2. *Medium Level of Support*: Two of these states (France-Germany or France-UK or Germany-UK) champion EU initiatives that support UN agreement on human security issues, and support the potential UN agreement without reservation.

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<sup>56</sup> *Ibid.*, p.332.

<sup>57</sup> C. Hill, “European Powers in the Security Council” in K.V. Laatikainen and K.E. Smith (eds.), *Intersecting Multilateralism: The European Union at the United Nations*, London, Palgrave, 2006, p.54.

<sup>58</sup> *Ibid.*, p.53.

3. *High Level of Support:* France, Germany and the UK champion EU initiatives that support UN agreement on human security issues, and all three states support the potential UN agreement without reservation.

#### *Variables at the Domestic Level*

Agreements reached at the international level must be ratified, or accepted, by each of the 27 EU Member States. According to Putnam, ratification may require a formal voting procedure, but can also be any decision-process at the domestic level that is required to endorse or implement an international agreement whether formally or informally.<sup>60</sup> The process of ratification can thus involve various actors. Putnam argues that at the domestic level, the power and preferences of major actors as well as the formation of possible coalitions can be significant determinants on the achievement of an international agreement.

<sup>61</sup> It is reasonable to suppose that conditions, or variables, which may influence the EU's effectiveness, are linked to main actors and coalitions involved in domestic negotiations on human security issues. Several players at the domestic level can be identified as "major actors" in domestic negotiation on human security matters. This thesis argues that there are two main conditions at the domestic level that may affect on the EU's effectiveness: a unified position within a government and the influence of the coalition of NGO.

The examination of domestic politics becomes extremely complex when studying the EU in international negotiations. Collinson argues that it is important "to identify those interests that can be demonstrated to have a significant impact on negotiations taking place at the EU and international levels".<sup>62</sup> In the case of the EU in human security negotiations, certain EU countries may have a more impact on negotiations than other states. As previously discussed, France, Germany and the UK are important players both at the UN and in the formation of EU foreign policy. Furthermore, the Member States that hold the Presidency represent the EU at the UN and are in a strategic position to influence negotiations at the EU level. The

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<sup>59</sup> See website of the Permanent Mission of Germany to the United Nations: <http://www.new-york-un.diplo.de/Vertretung/newyorkvn/en/Startseite.html> accessed on 15/11/2007

<sup>60</sup> Putman, *op.cit.*, p.436.

<sup>61</sup> *Ibid.*, p.442-448.



analysis of domestic politics will thus focus on four actors: France, Germany, the UK, and “The Presidency”. For practical consideration, all EU Member States holding the Presidency are represented by one category: “The Presidency”.

#### a) *Unified position within EU governments*

The presence or absence of a common position among various ministries within a national government/administration will be the first variable explored at the domestic level. The literature on arms control negotiations suggests that “[p]ower struggles among domestic actors, agencies and pressure groups (bureaucratic, diplomatic, civil, military and political) may shift foreign policies and alter a state’s negotiating positions”.<sup>63</sup> Most studies have examined arms control agreements in connection to the United States. In the US case, several significant players are involved in domestic negotiations. These players include the White House, often with its own political and foreign policy agenda, the State Department and various divisions of the Defence Department, which may be directly affected by the agreements on the table.<sup>64</sup> Transposed to a European context, the players involved in internal negotiations would be the bureau of the head of state or government (President/Prime Minister), the Ministry of Foreign Affairs, and the Ministry of Defence. The main goal of domestic negotiations is to produce a position that will be accepted by each of these groups: “each of these organizations involved will seek, within the limit of its influence and effectiveness in the bureaucratic of situation, to preserve its own interests, or at least, to avoid having them badly violated.”<sup>65</sup>

Human security negotiations do not only address arms control and disarmament; they also encompass issues of human rights and development. While the Foreign Ministry may be the actor present at the negotiating table, various ministries may be affected by the signing of an international agreement on a human security issue. This is especially true with respect to

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<sup>62</sup> S. Collinson, ““Issue-systems”, “multilevel games” and the analysis of the EU’s external commercial and associated policies: a research agenda”, *Journal of European Public Policy*, vol.6,no.2, 1999, p.219.

<sup>63</sup> R. Johnson “Changing Perceptions and Practice in Multilateral Arms Control Negotiations”, in J. Borrie and V. Martin Radin (eds.), *Thinking Outside the Box in Multilateral Disarmament and Arms Control Negotiations*, Geneva, UNIDIR-United Nations Publications, 2006, p.61

<sup>64</sup> S.E. Miller “Politics over Promise. Domestic Impediments to Arms Control” *International Security*, vol.8, no.4, 1984, p.80.

<sup>65</sup> *Ibid.*, p.80.

Ministry of Defence: an international agreement on arms control or the age of recruitment of soldiers can have a direct impact on the military programmes. In addition to the Ministry of Foreign Affairs and the Ministry of Defence, the ministry responsible for aid and development programmes and even the bureau of the head of state (President/Prime minister) may be involved in the decision to support a specific initiative.

One observation remains constant: domestic negotiations on arms control, disarmament and other human security issues entail internal bargaining. This bargaining becomes a crucial part of decision-process that is needed to endorse or implement an international agreement, thus it is part of the ratification process. National government usually strive to achieve a unified governmental position and will not support a human security agreement unless its departments/ministries are in agreement. In fact, in situations of arms control agreements, military support for agreements is considered to be crucial to the ratification process.<sup>66</sup> This internal bargaining can become problematic during negotiations that deal with human security affairs and should also be considered. As previously mentioned, the primary challenge at the domestic level is to reach a position that each ministry that is affected by the agreement at the international level will accept. Each department/ministry may have its own policy and defend its own position regarding human security issues. More importantly, in certain cases, this division may be recognized and even articulated publicly by government. The statements and policy papers that each ministry produces often reflects this position and will be used as indicators to determine whether there is a unified position within a specific EU government.

Nominal measurements will be used to explore this variable:

*-Presence of a unified position within EU governments*

*-Absence of a unified position within EU governments*

#### b) Influence of NGOs and International Coalitions of NGOs

Negotiations on human security matters at the domestic level may also involve another type of actors: non-governmental organizations (NGOs). The second variable at the domestic

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<sup>66</sup> *Ibid.*, p.81

level relates to the influence of NGOs and international coalitions of NGOs. One could argue that NGOs are active at all three levels of negotiations and that is, in some respect, accurate. However, this thesis agrees with Hampson and Reid, who contends that coalitions of NGOs are not necessarily capable of influencing the international arenas which are dominated by states. NGOs can generate interest and mobilize public support for the “cause,” but they need assistance of certain allies (i.e. states) who will endorse their positions, advocate their concerns on the negotiating table and in the negotiations.<sup>67</sup> The need for NGOs to secure states as allies seems to indicate NGOs and coalitions NGOs will be more active at the domestic level and probably target individual states rather than EU institutions or international organizations.

Several authors have recognized the increasing influence of transnational advocacy networks, such as NGOs coalitions, on international negotiations.<sup>68</sup> Some even argue that NGOs can affect international negotiations on high political issues such as security and weapons control.<sup>69</sup> In the last decade, civil society actors have become actively engaged in politicizing human security issues, mobilizing public opinion and attempting to influence states to review their security policy.<sup>70</sup> In fact, there is evidence that civil society movements have been successful in influencing states’ preferences to cooperate with other states on disarmament and arms control.<sup>71</sup> These types of negotiations often “demand detailed knowledge and persistent attention, and the existence of NGOs [...] has often served to encouraged or discouraged certain governmental initiatives, or spur government representatives to action.”<sup>72</sup>

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<sup>67</sup> F.O.Hampson with H.Reid “Coalition Diversity and Normative Legitimacy in Human Security Negotiations”, *International Negotiation*, vol.8, 2003,,p.12.

<sup>68</sup> See A. F. Cooper “Like-minded nations, NGOs, and the changing pattern of diplomacy within the UN system: An introductory perspective” in A.F. Cooper, J. English and R. Thakur (eds.) *Enhancing Global Governance: Towards a New Diplomacy?*, Tokyo-New York-Paris: United Nations University Press, 2002, pp.1-18; and M.E. Keck and K. Sikkink *Activists Beyond Borders*, Ithaca and London, Cornell University Press, 1998.

<sup>69</sup> K. Krause “Multilateral Diplomacy, Norm Building, an UN conferences: the Case of Small Arms and Light Weapons” *Global Governance*, vol. 8, no.2, 2002, pp.247-263; Cooper, *op.cit*,pp.1-18; K.R. Rutherford, “A Theoretical Examination of Disarming States : NGOs and Anti-Personnel Landmines” , *International Politics*, vol.37,no.4, 2001, pp.457-478.

<sup>70</sup> See R. Price, “Reversing the Gun Sight: Transnational Civil Society Targets Land Mines”, *International Organization*, vol.52, no.3, 1998, pp.613-644.

<sup>71</sup> See *Ibid.*, pp.613-644 and J.W. Knopf, *Domestic Society and International Cooperation. The Impact of Protest on US Arms Control Policy*, Cambridge, Cambridge University Press, 1998.

<sup>72</sup> D. Boothby, “Disarmament: Successes and Failures” in J.E. Krasno (ed.), *The United Nations. Confronting the Challenges of Global Society*, Boulder, London, Lynne Rienner Publishers, 2004, p.17.

While NGOs can generate momentum in negotiations and “have become progressively more assertive in demanding a voice at the top decision-making tables,”<sup>73</sup> they are often unable (or not permitted) to participate in international negotiations on human security issues and to have a direct effect on the negotiations. Nonetheless, actors from civil society should also be considered as significant players in domestic bargaining on human security issues.

The general purpose of international coalitions of NGOs is to pressure governments to encourage agreement on a specific issue. The increasing role of transnational advocacy networks, such as NGO coalitions, in international negotiations has been increasingly acknowledged.<sup>74</sup> The main aim of these networks or, in this case coalition of NGOs, is often to modify the behaviour of states and of international organizations.<sup>75</sup> They may also directly stimulate the pursuit of cooperation on issues such as arms control.<sup>76</sup> In fact, Knopf argues that arms control cooperation is less likely to occur if there is no organized public support for the cooperation: for example, the actual or potential mobilization of domestic opposition directly affected the US decision to cooperate with the Soviet Union on arms control issues during the Cold War.<sup>77</sup>

The concept of “influence” is difficult to measure. Knopf identifies three influence mechanisms that can be used by citizen campaigns (or NGOs in this thesis) to influence the national government to pursue cooperation with other international actors: electoral pressure, elite coalition shifting, and bureaucratic utilization. This thesis will use these three influence mechanisms as indicators of NGOs’ influence in Member States.

First, electoral pressure involves growing activism and mobilization of public opinion can produce electoral incentives for action. Faced with this growing citizen activism and mobilization of public opinion, an incumbent administration/government might decide to

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<sup>73</sup> R. Thakur, “Security in the new millennium” in A.F. Cooper, J. English and R. Thakur (eds.) *Enhancing Global Governance: Towards a New Diplomacy*, Tokyo, United Nations University Press, 2002, p.270.

<sup>74</sup> See Cooper, *op.cit.*; Keck and Sikkink *op.cit.*.

<sup>75</sup> Keck and Sikkink, *op.cit.*, p.2

<sup>76</sup> Knopf, *op.cit.*

<sup>77</sup> *Ibid.*, p.1.

shift its policies. An administration/government may be concerned that the opposition party or parties will gain the support of voters who are dissatisfied with the administration/government's position.<sup>78</sup> The second mechanism, elite coalition-shift, occurs when NGOs become part of the dynamics of elite coalition formation.<sup>79</sup> NGOs combine their resources with elites who share their policy goals and thus enhance the capacities of these like-minded elites. These groups can persuade elites to take action on an issue in the first place and strengthen the elites' ability to argue on behalf of a policy shift.<sup>80</sup> The third mechanism, the "bureaucratic utilization", takes place when arguments provided by NGOs are used by officials inside the policy making system to gain advantage in debates with other actors in the government. NGO activities, therefore, directly affect internal bargaining. It should be noted that Knopf identifies division within a government as a pre-condition that is necessary for this last mechanism to operate.<sup>81</sup>

For the purpose of this thesis, if NGOs and coalitions of NGOs utilize one of the influence mechanisms, then the presence of influence of the international coalition will be confirmed. This thesis will only give a simplifying picture of the actual influence of NGOs and NGOs coalition within the EU. It is important to stress that an *absence of influence* does not suggest that NGOs were not active in the European Union. It only indicates that there is little or no evidence of the use by NGOs of at least one of the three influence mechanisms in France, Germany and the UK and the Member States holding the Council Presidency.

This variable will be measured using a nominal measurement:

*-Presence of Influence:* NGOs and NGO coalition use at least one of the three influence mechanisms (mass electoral pressure and/or shifting elite coalition and/or bureaucratic utilization).

*-Absence of Influence:* There is no or little evidence that NGO and NGO coalitions use at least one of the three influence mechanisms.

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<sup>78</sup> *Ibid.*, pp.57-60.

<sup>79</sup> *Ibid.*, pp.60-64.

<sup>80</sup> *Ibid.*, p.64.

### **3.4- Hypotheses**

A relationship between each independent variable and the dependent variable (the EU's effectiveness) is expected. The following hypotheses regarding the nature of the relationship between the dependent variable (effectiveness) and each of the independent have been defined. This thesis hypothesizes that the presence of the following conditions would lead to an increase of the EU's "effectiveness".

The EU's effectiveness at the UN on human security issues will increase if :

At the international level (Level I) there is:

- Hypothesis 1: A high degree of EU's commitment to multilateralism.
- Hypothesis 2: A majority voting rule in negotiations
- Hypothesis 3: A positive US position

At the EU level (Level II) there is:

- Hypothesis 4: A high level of involvement on the part of the Presidency
- Hypothesis 5: A high level of participation of the European Commission
- Hypothesis 6: A high level of French, German and British support

At the domestic level (Level III) there is:

- Hypothesis 7: A unified position in EU governments
- Hypothesis 8: Presence of influence of NGOs and international coalition of NGOs

### **3.5 Methodology and Research Methods**

In order to investigate the EU's effectiveness at the UN, this thesis used different research methods. First, this thesis conducts a comparative analysis of case studies. Three cases of human security negotiations were selected: 1) the ban on anti-personnel landmines: 2) the illicit trade in small arms and light weapons: 3) the involvement of children and armed

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<sup>81</sup> *Ibid.*, p.69.

conflict. Second, this research used three different methods of data collection: documentary analysis, elite interviewing and non-participant observation.

### *Case Study Research and Comparative Methodology*

The case study is a research strategy that is often used when investigating a “why” question about a contemporary set of events over which the investigator has little or no control.<sup>82</sup> Compared to other research strategies such as the historical or the experimental method, case study research enables researchers to examine current events, but “when the relevant behaviours cannot be manipulated”.<sup>83</sup> While case studies and histories used similar methods, the case study’s advantage is its ability to use various sources of evidence such as documents, interviews and observation that might not be available for a historical study. Furthermore, the use of multiple cases provides a variety of convincing evidence; therefore, the research project is strengthened.<sup>84</sup> Lijphart stresses that the case study method and the comparative method can and should be loosely connected and that certain types of case study approaches, including the multiple-case study approach, can be considered as implicit parts of the comparative method.<sup>85</sup> A comparative perspective is also particularly relevant for testing hypotheses and investigating a supposed relationship between variables.<sup>86</sup> In this thesis, a multiple-case study approach was the preferred strategy to answer the main research question of this thesis. This approach was used to select data and to test the relationship between the dependent variable, the EU’s effectiveness, and the independent variables identified at each of the levels of analysis

### *Cases Selected*

In a multiple-case study approach, cases must be selected carefully. Cases should either produce similar results or produce contrasting results, but for predictable reasons.<sup>87</sup> Burnham

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<sup>82</sup> See R. Yin, *Case Study Research – Design and Methods*, 3rd ed., Thousand Oaks, Sage, 2003., pp.1-9.

<sup>83</sup> *Ibid.*, p.7.

<sup>84</sup> *Ibid.*, p.46

<sup>85</sup> A. Lijphart, “Comparative Politics and the Comparative Methods”, *The American Political Science Review*, vol.65, no.3, 1971, p.691.

<sup>86</sup> Burnham, P., Gilland, K., Grant, W. and Layton-Henry, Z., *Research Methods in Politics*, Basingstoke, Palgrave Macmillan, 2004, pp.68-69.

<sup>87</sup> Yin, *op.cit.*, p.46.

et al. emphasizes that the selection of cases directly affects the quality of the comparative research. In a multiple-case study/comparative research design, the number of cases selected should first be dependent on how many suitable cases exist in regard to the research question.<sup>88</sup> In addition, Lijphart argues that the selection and the analysis of each case should be motivated by the potential contributions to theory-building.<sup>89</sup> For the purposes of this thesis, several case studies are available. The United Nations increasingly addressed human security issues. Since the beginning of the 1990s, a number of negotiations within the UN framework have dealt with human security issues. As mentioned previously, the concept of human security encompasses a wide array of issues from disarmament to environmental issues, human rights and organized crime. However, this thesis focuses on a restrictive definition of the concept. Human security issues are defined as issues that focus primarily on the protection of civilians from violent threats. Following the use of this definition of human security, the number of cases that are available for analysis is reduced. Therefore, cases of UN negotiations regarding issues such as the environment, social or political or economic rights or health will not be considered in this thesis.

Several criteria must be considered when selecting cases. Cases selected should reveal if the independent variables have an effect on the dependent variable. To accept the hypotheses, the effect on the dependent variable should be the similar across all the cases selected.<sup>90</sup> Furthermore, cases should not be selected on the dependent variable, as there would be no theoretical possibility of variance on the dependent variable. Burnham et al. argue that “unless cases are included that are different with respect to the dependent variable,” it is difficult to derive any conclusions from a multiple-case study.<sup>91</sup>

In this thesis, the concept of “effectiveness” is measured according to the success of reaching an agreement at the UN level (external effectiveness) in negotiations on human security matters. Thus, cases of successful and unsuccessful negotiations should be selected. Furthermore, cases selected must also vary with respect to the “internal effectiveness” of the EU; that is, the willingness of the EU Member States to act collectively at the UN and to reach agreement on a common position.

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<sup>88</sup> Burnman et al., *op.cit.*, p.74-75.

<sup>89</sup> Lijphart, *op.cit.*, p.693.

<sup>90</sup> Burnham et al., *op.cit.*, p.62



For the purpose of this thesis, three case studies have been selected: 1) the ban on anti-personnel landmines; 2) the illicit trade of small arms and light weapons; and 3) the involvement of children in armed conflict.

The choice of these case studies was based on a number of factors. First, all three cases selected were cases of negotiations that focus primarily on the protection of civilians from violent threats. Second, there was some evidence to suggest that at least some if not all EU Member States actively took part in negotiations at the international level (that is at the UN). Third, the EU's internal and external effectiveness varied across the cases. Fourth, the choice of the case studies was also based on the prior hypothesizing of different type of conditions which may affect the EU's effectiveness and the desire to have cases covering each type of conditions.<sup>92</sup> For example, in all these three cases, a coalition of NGOs was created to campaign on the specific issue discussed at the international level.

#### 1 – *The ban on anti-personnel landmines*

The first case study examined negotiations surrounding the ban on anti-personnel landmines. Following the end of the Cold War, the fight against landmines became a central issue of discussions at the UN. At the international level, several EU Member States were involved in promoting the ban on landmines and actively working with other UN member states and the International Campaign to Ban landmines (ICBL), a coalition of NGOs created to achieve an international ban on anti-personnel landmines. The landmines issue was also discussed at the EU level throughout the 1990s: several EU joint actions on landmines were adopted during this period. When the UN review conference of the 1980 United Nations Convention on Certain Conventional Weapons' Protocol II on landmines opened in 1995, a minority of EU Member States supported the idea of a comprehensive ban on landmines. Yet, by the end of 1997, a landmark treaty prohibiting landmines, the Ottawa Convention<sup>93</sup> (or mine ban treaty) was supported by all the EU Member States and signed by all EU Member States except Finland.

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<sup>91</sup> *Ibid.*, Box 3.5, p.76.

<sup>92</sup> On this rationale for choosing cases, see Yin, *op.cit.*, pp.52.

<sup>93</sup> *The Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction.*

This thesis acknowledges the fact that technically most negotiations leading to the mine ban treaty took place in the Ottawa Process and were, therefore, removed from the UN framework. However, the Ottawa Process was born out of UN negotiations regarding the ban on landmines and was given a seal of approval by the UN. UN agencies and the UN Secretary-General completely endorsed the Process.: UN representatives were present and active at each of the conferences of the Process occasionally acting in the role of an “éminence grise”.. In addition, the diplomatic framework established for the negotiations of the treaty was based on the UN Assembly rules of procedures. The Secretary-General of the United Nations was also designated as the Depositary of the Ottawa Convention.

## *2 – The illicit trade in small arms and light weapon (SALW)*

At the end of the 1990s, an estimated 500 million of small arms and light weapons (SALW) were in circulation around the world. Civilians are most often the victims of these arms. The enormous proliferation and sale of millions of illegal SALW became an urgent concern. By the late 1990s, the UNGA began to discuss the need to convene an international conference on the illicit trade of arms. Small arms and light weapons had also become a significant CFSP issue. The EU had already adopted several specific measures to address the problems of SALW including a programme for the prevention and combating of the illicit trafficking of conventional arms and several Joint Actions. The EU’s efforts to address the SALW were also supported by a coalition of NGOs, the International Action Network on Small Arms (IANSA).

In July 2001, the United Nations Conference on the Illicit Trade of Small Arms and Light Weapons was convened at the United Nations in New York. The EU insisted on the implementation of export controls and export principles and the development of an international instrument on marking and tracing. In contrast, the United States clearly stated their opposition to constrain the legal trade and legal manufacturing of SALW. At the end of the conference, to the EU’s disappointment, no legally binding document was adopted. The conference did produce a Programme of Action, but the EU’s efforts to introduce specific export criteria were unsuccessful. Furthermore, in 2006, a Review Conference of the Programme of Action was organized in New York. Again, negotiations were unsuccessful: after two weeks of negotiations no substantial agreement was adopted. Negotiations on the

illicit trade in small arms and light weapons are still on-going at the UN. For practically reason, the case study only covers negotiations conducted between 1997 and 2006.

### 3 – *The involvement of children in armed conflict*

While the two other case studies dealt with disarmament and arms control issue, the third case study explores negotiations on the issue of child soldiers. The problem of child soldiers can be considered a human security issue as it concerns the security of individuals (in this case, children) and is linked to disarmament, development and human rights issues.

In 1999, as more than 300 000 children were used as combatants in conflicts, the UN Security Council adopted Resolution 1261 which condemned the use of child soldiers and urged the implementation of stronger measures to stop the practice. In May 2000, after six years of negotiations and intense lobbying by NGOs, an international treaty on the involvement of children in armed conflict was unanimously adopted by the UN General Assembly. The treaty, which is an Optional Protocol<sup>94</sup> to Convention of the Rights of the Child, sets the minimum age for compulsory recruitment at eighteen. While several EU Member States were engaged in the international efforts to achieve prohibition of any recruitment of children in hostilities, EU Member States failed to agree on setting eighteen as the minimum age for all forms of military recruitment, voluntary as well as compulsory. Furthermore, this case is also interesting because, during the negotiations of the Optional Protocol, the EU adopted several CFSP instruments which referred to the problem of child soldiers, but never directly addressed the issue. A unified EU approach to the problem of child soldiers only emerged in 2003 (that is three years after the adoption of the Optional Protocol) when the Council adopted Guidelines on children and armed conflict.<sup>95</sup>

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<sup>94</sup> See UNICEF/ Coalition to Stop the Use of Child Soldiers, *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict*, New York: UNICEF, 2003.

<sup>95</sup> Council of the European Union, *EU Guidelines on Children and Armed Conflict*, Brussels, 4 December 2003.

Case studies involve at least two or more methods of data collection. In order to investigate the EU's effectiveness in human security negotiations, this research project relied on three qualitative methods: documentary analysis, elite interviewing and non-participant observation. As mentioned previously, one of the strength of case studies is the use of different sources of evidence as this gives a more comprehensive account of the phenomenon studied.<sup>96</sup>

#### a) Documentary Analysis

Documentary analysis can be a vital contribution to the understanding of contemporary events: the use of documents can corroborate information and augment evidence from other sources.<sup>97</sup> For this research project, primary, secondary and tertiary document were used. Each document was assessed on the basis of its quality using criteria such as authenticity, credibility, and representativeness.<sup>98</sup> Ideally, most of the data analysed in this project would have originated from primary sources. Primary sources consist of evidence that was produced at the time of the event and was often intended for internal or restricted circulations only.<sup>99</sup> However, as negotiations in international organisations are often conducted in closed circles and information about the negotiations remains confidential, the access to certain documents was restricted.

For the purpose of this research project, administrative documents produced by EU institutions were collected. These included Declarations/Conclusions from the Council, Joint Actions, Common Positions and Common Strategies, statements of the Presidency and Commissioners, etc...Documents produced by the United Nations, such as session documents, resolutions, decisions and progress reports, were also examined. This thesis also used reports from non-governmental organizations (NGOs) and coalitions of NGOs as they

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<sup>96</sup> C.Hakim, *Research Design*, 2<sup>nd</sup> ed., London: Routledge, 2000.

<sup>97</sup> Yin, *op.cit.*, p.81.

<sup>98</sup> See J.Scott, *A Matter of Record- Documentary Sources in Social Research*, Cambridge, Polity Press, 1990, pp.30-31.

<sup>99</sup> Burnham et al., *op. cit.* p.165.

offered a different perspective on the negotiations. Finally, documents and statements produced by various ministries/departments of EU Member States were also examined.

#### b) Elite Interviewing and non-participant observation

Interviews with key actors involved in the negotiations and non-participant observation were two supplementary techniques that were used to collect data. These two techniques provided information that could not be found in documents. Indeed, official documents are often the final results of the negotiations; they may indicate whether the partners could or could not agree on a common view, but they do not reveal the whole story. Elite interviewing and non-participant observation were valuable tools to obtain a more comprehensive account of the negotiations and, therefore, to identify the variables that influence the EU's effectiveness.

Elite interviewing is an effective way to collect information about decision-making processes.<sup>100</sup> This form of interviewing gathers information from people who took part in or witnessed the events being studied or who have direct knowledge of the phenomenon. This type of interviewing is particularly appropriate when the interviewees are considered to be experts on the questions studied.<sup>101</sup> For the purpose of this thesis, semi-structured interviews were carried out in New York in June-July 2006, Brussels in October 2007, and Geneva in April 2008 (see Appendix I– Research Notes and Appendix II).

Interviews were conducted with officials from various EU Member States' Permanent Representation/Mission to the UN (in both New York and Geneva). Officials from the European Commission were also interviewed. Furthermore, several interviews were carried out with NGO representatives. As Leech stresses, activists, while not "elites" in the socioeconomic sense of the term, are experts in their field and should be considered as such.<sup>102</sup> NGOs personnel that had participated in the negotiation process or lobbied EU governments were thus considered as "elites".

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<sup>100</sup> Burnham et al., *op.cit.*, p.205.

<sup>101</sup> See B.Leech, "Interview Methods in Political Science" Symposium, *Political Science and Politics*, vol.35, no.4. Dec. 2002, pp.663-688.

<sup>102</sup> *Ibid.*, p.663.

Semi-structured interviews were used to help prevent imposing a static framework on the interview. Indeed, semi-structured interviews allow the interviewer to attain “a delicate balance between covering the topics that are considered significant by the interviewer and allowing the respondent to open new routes on topics without taking unrelated tangents”.<sup>103</sup> Most of the information gathered during the interviews was “not for attribution”, meaning that the information could be used and quoted provided that the individual giving the information would not be directly identified as the source of the information.<sup>104</sup>

In addition to elite interviewing, non-participant observation was also used to study the EU as an actor at the UN in human security negotiations. Non-participant observation can be described as “a situation in which the observer observes but does not participate in what is going on”.<sup>105</sup> Observational evidence can offer additional information about the topic being investigated. As another source of evidence, direct observations contribute to making the research project more robust. Non-participant observation was conducted during the United Nations Small Arms Conference in New York from 26 June-7 July 2006 (see Appendix I- Research Notes).

### **3.6 Conclusion**

This chapter has discussed the concept of effectiveness (the dependent variable). It has argued that, in order to answer the research question, effectiveness should be defined in two ways: internal effectiveness and external effectiveness. The chapter also provided eight testable hypotheses. Each hypothesis considered the relationship between the dependent variable and a specific independent variable (or condition). This chapter hypothesized that the EU’s effectiveness will increase if there is: a high degree of EU’s commitment to multilateralism; a majority voting rule in negotiations; a positive US position; a high level of involvement on the part of the Council Presidency; a high level of participation of the Commission; a high level of French, German and British support; a unified position in EU governments; and the presence of influence of NGOs and international coalitions of NGOs.

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<sup>103</sup> Burnham et al., *op.cit.*, p.213.

<sup>104</sup> K. Goldstein, “Getting in the Door: Sampling and Completing Elite Interviewing”, *Political Science and Politics*, vol.35, no.4, 2002, p.671.

<sup>105</sup> A. Bryman, *Social Research Methods*, 2<sup>nd</sup> ed., Oxford, Oxford University Press, p.167.

This chapter has also introduced the research methods used to answer the research question. It suggested that a multiple-case study approach is the preferred research strategy to investigate the EU's effectiveness in human security negotiations. In the following chapters (Chapter 4, 5, and 6), this thesis will examine the three cases selected: 1) the ban on anti-personnel landmines; 2) the illicit trade of small arms and light weapons; and 3) the involvement of children in armed conflict. Each case study will be examined using a multilevel approach to track both the dependent and independent variables and test the hypotheses. Chapter 7 will offer a comparative analysis of the three case studies: the hypotheses formulated will either be accepted or rejected.

## Working towards “Freedom from Fear”: The EU and the Ban on Anti-Personnel Landmines

### 4.1 Introduction

It is estimated that up to 110 millions anti-personnel landmines (APL) were in place in more than sixty-four countries at the end of the Cold War.<sup>1</sup> Anti-personnel landmines were identified as a direct threat to human security and to the enjoyment of “freedom from fear”.<sup>2</sup> In the early 1990s, NGOs working with landmines victims and the International Committee of the Red Cross (ICRC) pressed the international community to adopt a total ban on landmines. When the issue of landmines first emerged on the international agenda, divergent points of view on the issues were present in the EU with only a minority of EU Member States supporting the idea of a comprehensive ban. However, by the end of 1997, after years of negotiations, a landmark treaty prohibiting landmines, the Ottawa Convention, was welcomed by the European Union and signed by all EU Member States except Finland.

This chapter is divided in four main sections. The first section examines the emergence of the issue on the international agenda. The three following sections analyze different phases of negotiation leading to the adoption of a comprehensive ban on anti-personnel landmines (see Table 4.1). The first phase of negotiations covers those within the UN Conference on Disarmament in 1995-1996. Negotiations at the beginning of the Ottawa Process (December 1996-May 1997) form the second phase of negotiations. The third phase of negotiations includes the last months of the Ottawa Process (Spring 1997- December 1997). In each phase, all three levels of negotiations- international, EU and domestic- are examined.

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<sup>1</sup> U.S. State Department, *Hidden Killers: the Global Landmines Crisis*, Washington D.C., U.S. Government Printing Office, 1994, p.1.

<sup>2</sup> P. Cornish, *Anti-Personnel Mines- Controlling the Plague of « Butterflies »*, London, Royal Institute of International Affairs, 1994., p.19.



## **4.2 The emergence of the issue on the international agenda**

Inexpensive to produce and capable of having devastating effects on the enemy, anti-personnel landmines have been used in conflicts since the 19<sup>th</sup> century. However, the First and Second World War witnessed the most extensive deployment of this weapon. APL are a distinctive type of weapon mainly because of their target: they are designed to kill or injure an enemy soldier walking alone. In addition to the physiological damage, the psychological effect of this type of weapon can be ravaging: first, the type of injury inflicted by APL can greatly increase the level of fear; second, there is an almost certainty of severe injuries if the APL detonates; third, there is no possibility to fight back against this type of weapon.<sup>3</sup> The humanitarian consequences of the use of these weapons were first acknowledged at the end of the 1960s, especially with the increased number of civilian victims during the Vietnam War. APL are rarely removed once the fighting has ceased. Demining activities are complex and extremely costly, thus these weapons continue to cause casualties long after the hostilities are over.<sup>4</sup> The majority of the victims of APL, however, are no longer soldiers but have become civilians.

Despite the early recognition of the deadly effects of APL on civilians, discussions on the issue only began to monopolize the international agenda with the end of the Cold War. Several factors explain this: First, major changes in international context at the end of 1980s rendered potential discussions and agreements on disarmament and arms control issues more plausible. Second, in the early 1990s, peacekeeping operations were established in countries such as Afghanistan, Angola, Cambodia and Mozambique. UN peacekeeping missions were often confronted with the presence of millions of landmines that directly affected their work. The international community became extremely aware of the need to address APL issues.

Discussions on various ways to minimize the ravages caused by the use of these weapons first emerged in regional and international organizations. The involvement of the United Nations in mine clearance programmes began in 1988, with UN-sponsored mine clearing

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<sup>3</sup> See T. Gaulin, "A Necessary Evil: Reexamining the Military Utility of Antipersonnel Landmines" in R. Matthews, B. McDonald and K.R. Rutherford (eds.), *Landmines and Human Security*, Albany, State University of New York Press, 2004, pp.212-213.

<sup>4</sup> Cornish, *op.cit.*, p.20.

programmes in Afghanistan. These activities were regarded as humanitarian operations and paved the way for the establishment of similar demining programmes in various other parts of the world.<sup>5</sup> As with other sectors of UN activities, the organization turned to other international organization and NGOs to help implement the diverse programmes.

Not surprisingly, NGOs and other organizations involved in mine action activities such as the International Committee of the Red Cross (ICRC) were the first actors to appeal to the international community to address APL issue. In October 1992, six NGOs<sup>6</sup> decided to form a coalition and created the International Campaign to Ban landmines (ICBL). The aim of the campaign was to achieve an international ban on anti-personnel landmines. The United Nations was rapidly identified as the forum in which this total ban could be achieved. The ICBL argued that, in order to minimize the deadly effects of APL, states that, produced, used and exported landmines needed to accept to act globally on the matter and to stop the use of such weapon.<sup>7</sup>

At the time of the creation of the ICBL, an international convention addressing the issue of landmines already existed: the 1980 United Nations Convention on Certain Conventional Weapons (CCW). Protocol II of this Convention not only defined the term “landmines”, but more importantly prohibited their use on civilians. Thus, the first efforts to achieve a total ban on landmines were concentrated on the revision of this Convention and its Protocol II. Discussions on potential revision of the CCW would have to take place within the most important multilateral negotiating forum for disarmament agreement: the United Nations Conference on Disarmament (CD).

France was the first country to ask the United Nations to convene a revision conference of the CCW: during a visit to mine infested Cambodia, in February 1993, the French President

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<sup>5</sup> Programmes were established in Cambodia (1992), Mozambique (1993), Somalia (1994), Angola (1995) and in the Balkans region. These operations were supervised by the Office for the Coordination of Humanitarian Affairs (OCHA) and the Department of Peacekeeping Operations (DKPO).

<sup>6</sup> Handicap International (France-Belgium), Human Rights Watch (United States), Medico International (Germany), Mines Advisory Group (United Kingdom), Physicians for Human Rights (United States), Vietnam Veterans of America Foundation (United States) all joined together in the effort to ban landmines

François Mitterrand announced that France had asked the UN Secretary General to rapidly convene an international conference on the review of the CCW Convention.<sup>8</sup> France's initiative was enthusiastically supported by two other EU Member States, Sweden and the Netherlands. However, at this point, few EU Member States showed interest in the issue of landmines. Several EU Member States such as the United Kingdom, Spain and Italy were important landmines producers and had no interest in the introduction of an international ban on landmines. Nevertheless, the fight against landmines received another strong boost from a major UN player: the United States. In 1992, the US became one of the first countries to adopt a one-year export moratorium on anti-personnel landmines. The American President, Bill Clinton also became one of the first world leaders to call for the "eventual elimination" of landmines.<sup>9</sup> All these appeals culminated, at the end of 1993, in the adoption of a series of UNGA resolutions on landmines including a resolution calling upon states to agree on a export moratorium on anti-personnel mines. In January 1994, another resolution officially requested UN member states to convene a conference to review the Convention on Conventional Weapons.<sup>10</sup> A series of four governmental experts sessions were organized in Geneva in 1994 and early 1995 to prepare the Review Conference. The first session of Review Conference on the CCW and its Protocol II on landmines opened in Vienna on 25 September 1995.

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<sup>7</sup> J. Williams and S. Goose, "The International Campaign to Ban Landmines", in M. Cameron, R. J. Lawson and B.W. Tomlin (eds), *To Walk without Fear- The Global Movement to Ban Landmines*, Oxford, Oxford University Press, 1998, p.22.

<sup>8</sup> See *Allocution de M. François Mitterrand, Président de la République Française*, Phnom Penh, Cambodia, 11/02/1993.

<sup>9</sup> M. Wareham, "Rhetoric and Policy Realities in the United States" in M.A. Cameron et al., *To Walk Without Fear. The Global Movement to Ban Landmines*, Don Mills, Ontario, Oxford University Press Canada, 1998, p.213.

**Table 4.1 APL Case: Phases of negotiations**

Phases of Negotiations	
Phase 1: <i>Negotiations in the Conference on Disarmament</i> 1995-1996	<p>■ <b>25 September- 13 October 1995:</b> In Vienna, Austria, the First session of CCW Review Conference is held.</p> <p>■ <b>15-19 January 1996:</b> In Geneva, Switzerland, the Second session of the CCW Review Conference is held.</p> <p>■ <b>22 April-3 May 1996:</b> In Geneva, Switzerland, the Third Session of CCW Review Conference is held. On 3 May, agreement is reached on a series of amendments to Protocol II of the CCW.</p>
Phase 2: <i>The Ottawa Process (Part I)</i> October 1996-May 1997	<p>■ <b>3-5 October 1996:</b> In Ottawa, Canada, the Canadian government calls on the international community to negotiate and sign a convention banning anti-personnel landmines by December 1997.</p> <p>■ <b>12-14 February 1997:</b> In Vienna, Austria, 111 states participate in first formal discussions of draft anti-personnel mine ban convention.</p>
Phase 3: <i>The Ottawa Process (Part II): spring</i> 1997-December 1997	<p>■ <b>24-27 June 1997:</b> In Brussels, Belgium, 97 countries sign the Brussels Declaration pledging their support for a convention to ban anti-personnel mines no later than December 1997.</p> <p>■ <b>1-18 September 1997:</b> In Oslo, Norway, the Convention text is negotiated over the course of three weeks.</p> <p>■ <b>2-4 December 1997:</b> In Ottawa, 122 countries sign <i>Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction</i> (the Ottawa Convention).</p>

### **4.3 Negotiations in the Conference on Disarmament (September 1995-May 1996)**

All EU Member States participated to the first session of the Review Conference. At the time of the first session, the CD had around sixty members including ten EU members: Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom. Denmark, Greece, Ireland, Luxemburg, and Portugal thus participated to negotiations as observers.

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<sup>10</sup> See UNGA Resolution A/RES/48/79

- *Level I*

When negotiations began in Vienna, there was a wide consensus on the urgent need for the revision of the CCW and its Protocol II; however, there was a lack of agreement on which amendments to include. At the first session of Review Conference, Spain, speaking on the behalf of the EU, stated that the European Union desired that the Review Conference focused on four main issues: to extend the scope of application of the Protocol to non-international armed conflicts; to strengthen restrictions or prohibitions concerning anti-personnel mines; to establish an effective verification mechanism; and to include provisions concerning technical assistance for mine clearance.<sup>11</sup> Several EU Member States expressed their full support for the EU priorities in their own national statements. The Spanish Presidency's statement, however, did not mention the question of a comprehensive ban on landmines. This omission was the result of the divergent positions of EU Member States on this question. Austria, Belgium, Germany, Ireland, Sweden and Denmark all voiced their support for a comprehensive ban. France supported the ban on the production and trade of anti-personnel mines, but not the prohibition of the weapons' use. The United Kingdom considered anti-personnel landmines as legitimate means of defence and only favoured the idea of a ban, but only on non-detectable anti-personnel mines. While Finland "recognized the total elimination of anti-personnel landmines as an ultimate goal towards which states could move most effectively as both militarily and economically viable alternatives were developed"<sup>12</sup>, it was opposed to a comprehensive ban because it remain sceptical that all states would adhere to it. It also strongly expressed its "legitimate defence needs".<sup>13</sup>

After three weeks of difficult negotiations in Vienna, states faced an impasse: no consensus could be reached on potential amendments to the Protocol. At this stage, only a small minority of states supported the idea of a comprehensive ban on APL. As the Conference on Disarmament operates on a consensus basis, the Review Conference was suspended until January 1996.

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<sup>11</sup> See United Nations, *Review Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. Final Document, Part II*, Documents and Summary Records of the Conference, Geneva, CCW/CONF.I/16, 01/01/1996, p.299.

<sup>12</sup> *Ibid.*, p.319.

<sup>13</sup> See ICBL, *Landmines Monitor Report 1999 – Toward a Mine-Free World*, New York, Human Rights Watch, 1999.

The following sessions of the Review Conferences in January 1996 and in April-May 1996 followed a similar pattern of discussions: negotiations concentrated on specific technical issues rather than on controversial idea of a comprehensive ban on APL. For example, two major landmines producers, the United States and the United Kingdom, insisted on the development of “smart” mines that automatically self-destruct rather than the adoption of comprehensive ban.<sup>14</sup> Interestingly, prior to the last session of the Review Conference, both countries had reiterated their support for an eventual ban on landmines, while maintaining their rights to use some types of mines. Indeed, in April 1996, President Clinton publicly declared that the US would lead a global effort to ban landmines; however, the US reserved its rights to use and produce “smart mines”.<sup>15</sup> A few days later, the UK also announced that it would work actively toward a total world-wide ban on anti-personnel mines, but also maintained its right to use particular types of landmines.<sup>16</sup> Despite strong American and British pressure at the Review Conference, the US-UK proposal was not supported by a majority of states and was later dropped.<sup>17</sup> Furthermore, during the negotiations, India, China and Russia repeatedly voiced their opposition to many of the proposed amendments and objected to initiating any discussions on an eventual ban on APL. The few countries that did support the idea of a potential ban on anti-personnel landmines at conference also acknowledge that the ban could be only achieved in the future but not immediately.<sup>18</sup>

An amended Protocol II was finally adopted in May 1996. If there were improvements, the Protocol still permitted the use of some types of landmines. The results of the Review Conference left many actors dissatisfied. In its closing statement, Italy, speaking on behalf of the European Union, stated that results of the Conference were disappointing in comparison to the goals set by the EU in a number of important aspects such as reaching an agreement

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<sup>14</sup> D. Hubert, *The Landmine Ban: a Case Study in Humanitarian Advocacy*, The Thomas J. Watson Jr. Institute for International Studies, Occasional Paper #42, Providence, Brown University, 2000, p.13

<sup>15</sup> See ICBL, *op.cit.*

<sup>16</sup> See Hansard, 22 April 1996, Column 28.

<sup>17</sup> See M. Dolan and C. Hunt “Negotiating in the Ottawa Process: the New Multilateralism” in M.A. Cameron et al., *To Walk Without Fear. The Global Movement to Ban Landmines*, Don Mills, Ontario, Oxford University Press Canada, 1998, p.401. and Hubert, *op.cit.*, p.13.

<sup>18</sup> Dolan and Hunt, *op.cit.*, p.401.

on an effective verification mechanism. It also declared that “the European Union would strive to meet the goal of the eventual elimination of anti-personnel landmines”.<sup>19</sup>

The disappointing results of the Review Conference, prompted many states to join the emerging pro-ban movement. By mid-1996, several EU Member States were willing to support a total ban on landmines. Following the results of the Review Conferences, the European Union issued a declaration that acknowledged that “significant steps forward” had been achieved, but stressed that “the results of the Review Conference fall short of its expectations”.<sup>20</sup>

- *Level II*

The European Parliament was the first EU institution to publicly denounce the use of landmines. As early as December 1992, the Parliament adopted a resolution<sup>21</sup> on the ravages caused by landmines. However, most EU Member States only became interested in the issue when it was on the UN’s agenda. Within the EU, anti-personnel landmines were perceived as development and humanitarian issues as well as a trade issue. Early on, the humanitarian aspect of problem was integrated into the EU’s discourse on APL. However, because landmines are weapons, discussions on APL quickly focused on matters of arms control and national security. It became apparent that any negotiation on APL would be subjected to the intergovernmental procedures of the EU’s Common Foreign and Security Policy.

Within the CFSP structure, the landmine issue was initially discussed at the Council of General Affairs. The Council Working Group in charge of discussing arms control issues, CODUN, was responsible for preparing most of EU debates on APL. However, some member states strongly questioned any basic involvement of the EU on the APL issue. Indeed, several EU Member States visibly preferred the landmines issue to remain a national

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<sup>19</sup> United Nations, *op.cit.*, p.433.

<sup>20</sup> European Union, *Declaration by the European Union on anti-personnel landmines*, 1992. Council General Affairs 13/05/1996.

question. Yet, from 1995, the APL was firmly added to the EU's agenda; through the mid-1990s, several states holding the EU Presidency would advocate for the need to address the issue at the EU level.

France, who held the EU Presidency in the first-half of 1995, had been an early campaigner for the fight against landmines and the need to review the CCW's Protocol II. Shortly after raising the issue at the United Nations, France convinced its EU colleagues to support the initiative and to introduce strong measures to minimize the effects of APL. During the French Presidency, in May 1995, the first EU Joint Action on APL was adopted. The Joint Action (95/170/CFSP) established a common moratorium on the exports of non-detectable and non-self-destructive landmines and called for the member states to work actively at the CCW Review Conference toward the strengthening of Protocol II. Even if EU Member States had agreed on the Joint Action, their opinions of the most effective approach to the landmines issue strongly diverged. While Austria, Belgium and Sweden clearly supported the idea of a comprehensive ban on landmines, most other EU Member States were reluctant to endorse the idea of a comprehensive ban.

Despite their division on the issue of a total ban, EU states were united in their disappointment of the amendments introduced in Protocol II. Italy, which was holding the EU Presidency at the time of the last Review Conference, publicly showed its dissatisfaction with the results of the Review Conference. During their presidency, the Italians intensified their diplomatic efforts to promote more restrictive measures against landmines.<sup>22</sup> The Italian frustration with the outcome of the Review Conference also led to adoption of the EU's declaration that deplored the modest results of the Review Conference and stated that the outcome felt short of the EU's expectations. In May 1996, the Development Council, under the Italian Presidency, also addressed the question of anti-personnel landmines. In its conclusions, the Council recognized the linkage between emergency aid, rehabilitation and long term development and emphasized the need for the EU to adopt an integrated and coordinated approach on problems such as APL.

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<sup>21</sup> See European Parliament, *Resolution on the injuries and loss of life caused by mines*, B3-1744/92, 17/12/1992.

<sup>22</sup> See ICBL, *op.cit.*



Even though the EU Member States were divided over the adoption of a comprehensive ban, the European Commission continued to work closely with the UN and fund mine-related activities. In fact, the European Commission began funding mine-related programmes as early as 1992 in countries such as Afghanistan, Cambodia and Bosnia. In the early 1990s, ECHO developed a strong partnership with the ICRC for demining projects.<sup>23</sup> At the time of the Review Conferences of the Convention on Conventional Weapons, the European Commission was already spending some 50 million of ECU from the European Community budget and the European Development Fund (EDF) on APL actions. This money was used to fund mine-clearance activities in Angola, Mozambique, Zimbabwe and for other types of APL actions in Bosnia-Herzegovina, Cambodia, Iraq, Laos and Afghanistan.

Furthermore, in a working paper on the fight against anti-personnel landmines, the European Commission identified the CODUN working group as the best mechanism for coordination of horizontal policy aspects of the anti-personnel landmines issue between the Commission and the Member States. The Commission, which recognized the importance of the development aspect of the question of APL, also emphasized the need to develop a coordination mechanism for this specific aspect.<sup>24</sup> With this working paper the Commission signaled its desire for the European Union to have a cohesive approach towards the question of APL which would include a prominent role for the Commission. The Commission recognized the central role the CODUN but wished to increase its coordination with this body of the Council; negotiations in CODUN were crucial to determine the position of the EU towards the Review Conferences of the CCW. Although the Commission was welcome to attend the Council meetings where the APL was discussed, it was not directly involved in the development of the EU's APL policy.<sup>25</sup>

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<sup>23</sup> G. Van Orden et R. Cox, "The European Union's Role in Overcoming the Tragedy of Anti-Personnel Landmines" in *UNIDIR Newsletter- Special Issue*, 3, 1997, p.28.

<sup>24</sup> Commission of the European Communities, *The Fight against Anti-personnel Landmines (APL): Proposal for an Integrated and Coordinated Approach*, Commission Staff Working Paper, Brussels, SEC(96) 2035, 05/11/1996.

<sup>25</sup> D. Long, "The European Union and the Ottawa Process to ban landmines", *Journal of European Public Policy*, vol.9, no.3, June 2002, p.432.

- *Level III*

Domestic politics played an important role in bringing the issue of landmines on both the agenda of United Nations and of the European Union. As previously discussed, France was the first country to publicly appeal to the international community to act on the issue of landmines. Mitterrand's appeal to the international community followed numerous efforts by the French NGO Handicap International to attract the attention of the French authorities. During the 1995 presidential electoral campaign, Handicap International, supported by the ICBL, questioned all the presidential candidates on the issue of APL. Although the landmine issue did not become part of the electoral debate, Jacques Chirac, the soon-to-be-elected President, assured Handicap International that he would encourage global efforts to ban the use of APL. Another leading pro-ban advocate in the French government was the new Secretary of State for Humanitarian Affairs, Xavier Emmanuelli. Once in office, Emmanuelli made the fight against APL one of his priorities. At the commencement of the first session of the Review conference in Vienna, Emmanuelli declared that France would stop the production and trade of anti-personnel landmines and begin to destroy its stocks. Nevertheless, at this stage, the French government remained deeply divided on the issue of APL. Indeed, the French Ministry of Defence defended the use of anti-personnel landmines for the protection of soldiers and installations. In addition, the Ministry of Foreign Affairs favoured the adoption of national unilateral ban over the implementation of an international comprehensive ban on APL.<sup>26</sup>

The German government was less divided on the idea of a comprehensive ban on landmines. The ICBL, which included as one of its founding member the German NGO Medico International, quickly targeted Germany for being a leader in the development of APL since the Second World War. This NGO gave impetus to a broader German NGO campaign, which mobilized German public opinion.<sup>27</sup> In 1994, the German government adopted a unilateral moratorium on exports of anti-personnel landmines. At the international level,

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<sup>26</sup> See P. Chabasse, "The French Campaign" in M.A. Cameron et al., *To Walk Without Fear. The Global Movement to Ban Landmines*, Don Mills, Ontario, Oxford University Press Canada, 1998, pp.60-67.

<sup>27</sup> See D. Long and L. Hindle, "Europe and the Ottawa Process: An overview" in M.A. Cameron et al., *To Walk Without Fear. The Global Movement to Ban Landmines*, Don Mills, Ontario, Oxford University Press Canada, 1998, p.254.

Germany also began to support the idea of a comprehensive ban. Italy, another major producer and exporters of landmines, had also begun to modify its landmine policy and support a comprehensive ban. By the time it took over the EU Presidency in 1996, Italy had already stopped authorizing the exports of anti-personnel landmines (in 1993), adopted a unilateral moratorium on the production and trade of anti-personnel landmines (in 1994) and ratified Protocol II of the CCW (in 1995). The changes in the Italian policy were driven by the economic crisis expected in this sector, the introduction of stricter legislation on the general arms trade. Intense debate in Italian parliament also put pressure on the government: in 1995-1996 seven bills were introduced by different political groups calling for the Italian government to review its policy on landmines.<sup>28</sup> The results of the Review Conference of the CCW deeply disappointed the Italians, but they remained convinced of the need to address the issue of landmines. They also believed that the EU could play an important role in this area.

The Italians received support from two other EU states: Austria and Belgium. Both these states had already attempted to control their use of landmines. In the summer of 1995, Austrian Forces began to destroy all their stocks of anti-personnel landmines. In 1994, the Belgian Parliament, which had been fervently targeted by the Belgian Network of the ICBL, pressured the government to act on the landmine issue. In March 1995, Belgium was the first country to adopt a unilateral law that banned the production, sale, export and use of landmines.<sup>29</sup>

In contrast, the United Kingdom, one of the largest producers of landmines, was not initially attracted to the idea of a comprehensive ban. In July 1994, the British government adopted a national moratorium on the export of “dumb mines” citing the indiscriminate effects of the weapon on civilians. The UK also participated actively in the Review Conference of the CCW. At the Review Conference, the UK first supported the ban on non-detectable APL and the adoption of an international code on the transfer of mines that would still allow the export and use of self-destructing or “smart” mines. However, before the end of the Review Conference, the UK announced a major policy shift on the issue of landmines: the UK would

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<sup>28</sup> See “Italy” in ICBL, *Landmines Monitor Report 1999 – Toward a Mine-Free World*, New York, Human Rights Watch, 1999.

<sup>29</sup> Long and Hindle, *op.cit.*, pp,254-255.

now work toward a world-wide ban on anti-personnel landmines, but also made it clear that they would only sign a treaty that had been agreed by all countries. It also declared that it would also only use anti-personnel landmines in exceptional circumstances. This shift in policy was largely due to increasing NGOs and public pressure. The British public opinion was not interested in the distinctions between different types of mines and therefore, did not fully understand the UK position of having a comprehensive ban. Both the Foreign Office and the Ministry of Defence were exposed to strong demands from the public to support an international ban.<sup>30</sup>

#### ***4.4 The beginning of the Ottawa Process: October 1996-May 1997***

When it became clear that CCW Review Conference would only produce disappointing results, a number of NGOs and delegates from the ICRC decided to organize a meeting with a small number of pro-ban states including EU Member States, Austria and Belgium. All participants to this meeting agreed to meet in October in Ottawa to discuss the best ways to achieve a comprehensive ban on landmines. The host country, Canada, invited all UN member states willing to discuss the idea of a total ban to attend this meeting.

- *Level I*

Austria, Belgium, Ireland and Denmark strongly supported the Canadian initiative. All these states believed that the consensus-based CD would not produced result quickly enough to effectively combat the effects of landmines. This view was shared by the UN Secretary-General Boutros-Ghali who condemn the slow pace of the CD negotiations and who passionately defended the idea of a comprehensive ban<sup>31</sup>. Several UN member states also showed their willingness to look for alternative forums of discussions. Most EU Member States as well as the majority of UN member states, however, were uncomfortable that an eventual ban on landmines would be discussed in a different forum than the established CD.

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<sup>30</sup> P. Bowers and T. Dodd, "Anti-Personnel Mines and the Policies of two British Governments", *RUSI Journal*, vol.143, no.1, 1998, p.13.

<sup>31</sup> S. Brem and K. Rutherford "Walking Together or Divided Agenda? Comparing Landmines and Small Arms Campaign", *Security Dialogue*, vol.32, no.2, 2001, pp.171-172.

Prior to the Ottawa Conference,<sup>32</sup> the UN Secretary-General and a number of pro-ban states were consulted by the Core Group of states in charge of organizing the meeting. The Ottawa Conference, however, was significantly different from the UN Conference on Disarmament because the ICBL and several other NGOs were directly involved in the preparation of the meeting.

A majority of EU Member States were full participants in the Ottawa Conference. Finland, Greece, Italy, Spain and the UK, however, decided to attend as observers. Negotiations in Ottawa were focused on the wording of the final declaration of the Conference. During the conference, important players such as France and the United States repeatedly insisted that negotiations on landmines should remain within the CD conference. Eventually, after difficult negotiations, the EU supported the final declaration of the Ottawa Conference, which reaffirmed a commitment to achieve a legally binding agreement to ban APL at the earliest possible. However none of the EU Member States were prepared for the unexpected invitation they received at the end of the Conference.

In his final speech, the Canadian Foreign Minister, Lloyd Axworthy, made a surprising announcement: he invited all delegates to return to Ottawa to sign a comprehensive ban treaty by the end of 1997. With this invitation, the Ottawa Process was launched. EU Member States were stunned by the invitation. Axworthy had consulted the UN Secretary-General, the Head of the ICRC and the co-ordinator of the ICBL before he made his final speech, but he did not discuss his project with his European colleagues. The Austrians quickly reacted to the statement and, without consulting the other EU Member States, circulated a draft version of a comprehensive mine-ban treaty.

Austria, Belgium, Ireland and the Netherlands with Canada, Mexico, Norway, the Philippines, South Africa and Switzerland immediately became members of the Core Group of states that supported the Ottawa Process. However, Axworthy's invitation was not welcomed by all states. Initially, the five permanent members of the Security Council criticized the Ottawa Process. France overtly disapproved of the Canadian initiative. France

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<sup>32</sup> The meeting was formally called the *International Strategy Conference: Towards a Global Ban on Anti-personnel Mines* (3-5 October 1996).

argued that the Canadians had not followed diplomatic etiquette and was concerned that the Ottawa Process would “replace” the CD. The UK, Italy, Spain, Greece and Finland were still reluctant to commit to a total ban of APL. These states were also confused and concerned that the EU had supported the final declaration of the Ottawa Conference<sup>33</sup>.

At the start of the Ottawa Process, the EU Member States were visibly divided on the issue of an eventual treaty banning APL. A few days after Axworthy’s surprising statement, the issue of a total ban of landmines was discussed at the United Nations. Some observers argued that because the Core Group of Ottawa Process chose to conduct negotiations outside the UN, the credibility of both the Conference on Disarmament and the United Nations would be undermined. However, both Boutros Boutros-Ghali and the new UN Secretary-General, Kofi Annan were quick to support the Ottawa Process and strongly encouraged states to reach an agreement on a total ban.<sup>34</sup> Pro-ban EU Member States not only worked with Canadians to push for the adoption of a UN resolution on the issue, but also with the Americans, who although they were not pleased with the Canadian initiative, still supported an eventual ban. On 10 December 1996, the UN General Assembly adopted a resolution (A/RES/51/45s) which called states to achieve an effective legally binding international agreement to ban the use, stockpiling, production and transfer of APL as soon as possible. The resolution did not refer to the Ottawa Process or to the CD. The resolution was not opposed by any states and gathered the support of 156 UN member states.

A number of meetings were planned both by civil society and the Core Group of the Ottawa to discuss the drawing of an international convention banning landmines. The Ottawa Process, in fact, involved two types of meetings. While some meetings focused on preparing and negotiating a treaty, others were used for wider consultations, lobbying governments and increasing the public support for a comprehensive ban. Between October 1996 and December 1997 more than a dozen conferences sponsored by pro-ban states, the ICRC, the

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<sup>33</sup> Long, *op.cit.*, p.433.

<sup>34</sup> M. Gwozdecky and J. Sinclair, “Landmines and Human Security” in R.G. McRae and D. Hubert (eds.), *Human Security and the New Diplomacy: Protecting People, Promoting Peace*, Montreal, McGill-Queen’s Press- MQUP, 2001, p.36.

ICBL or other NGOs were organized worldwide to discuss the comprehensive ban of landmines.<sup>35</sup>

Several EU Member States were called to play a prominent role in the Ottawa Process. At the Ottawa Conference in October 1996, Austria had presented an outline of a ban treaty. At the end of the Conference, the Canadians asked the Austrian government to expand the outline into a first draft of the treaty. With only a year to negotiate the treaty, the Core Group agreed that the text of the treaty should be kept short and that text should be borrowed from other relevant treaties. In late 1996 and early 1997, Austria held several consultations with governments and NGOs on the first version of the draft treaty. In the end, Austria produced a text with thirteen articles and organised an “Expert Meeting on the Text of a Total Ban Convention” in Vienna from 12-14 February 1997 to discuss the draft treaty. The meeting was open to all states as well as the UN, the ICRC and the ICBL. Some 111 states, including many states wary of the Ottawa Process, participated in the Vienna meeting. Following the meeting, the Austrians produced a second version of the draft treaty.

In March 1997, the Core Group of the Ottawa Process formally met to discuss the best way to achieve a total ban. By that time Germany and Columbia had decided to join the Core Group of the process. Members of the Core Group agreed that the negotiating process should rely on voting rather than consensus. Furthermore, only governments willing to support the idea of a comprehensive ban would be allowed to participate in negotiations. This would allow the Process to have a number advantages over the Conference on Disarmament, most importantly to make it faster process. It would also allow the Process to focus on drafting the treaty rather than being required to address disagreements among the states present at the negotiations.

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<sup>35</sup> Conferences were held in Ottawa (Canada), Vienna (Austria), Maputo (Mozambique), Tokyo (Japan), Harare (Zimbabwe), Bonn (Germany), Kempton Park (South Africa), Stockholm (Sweden), Ashgabat (Turkmenistan), Brussels (Belgium), Manila (Philippines), Sydney (Australia), Oslo (Norway), Sana'a (Yemen) See R. Lawson et al. “The Ottawa Process and the International Movement to Ban Anti-personnel Landmines” in M.A. Cameron et al. (eds.), *To Walk Without Fear. The Global Movement to Ban Landmines*, Don Mills, Ontario, Oxford University Press Canada, 1998, pp.160-184.; and F.O.Hampson, *Madness in Multitude: Human Security and the World Disorder*, Don Mills, Ontario, Oxford University Press, 2002, pp.85-88.

In April 1997, a second meeting was organized in Bonn to discuss the draft treaty, and more specifically, the controversial question of verification measures and compliance. Germany, although it was part of the Core Group of the Ottawa Process, supported a dual tracking approach to negotiations on APL. The German government believed that the Ottawa Process and the CD could complement each other. Germany's dedication to the Ottawa Process was also questioned because of its strong links with the United States. In January 1997, the Clinton administration announced its decisions to favour negotiation within the CD rather than participation in the Ottawa Process<sup>36</sup>. Yet, the German support to the Ottawa Process was reconfirmed when this second conference on the draft text treaty. Germany's involvement the Ottawa Process was critical, particularly because France and the United Kingdom were at first reticent to join the Ottawa Process and supported the American initiative to reinstate the issue of anti-personnel landmines on the CD agenda.

While France was a full participant at the Ottawa Conference, it emphasized that negotiations about the ban of anti-personnel mines should remain within the CD. During the first few months of the Ottawa Process, France remained sceptical of the process and did not endorse it. It did, however, support the United States in their attempt to add the issue of landmines to the agenda of the CD. Similarly in October 1996, the United Kingdom only participated in Ottawa as an observer. The British believed that a comprehensive ban should be achieved in the Conference on Disarmament. For most of 1997, the UK supported the American efforts to re-establish negotiations on APL within the CD and did not fully participate in meetings organised by the Core Group of the Ottawa Process. The British government believed that only an agreement supported by all major producers, exporters, and users of landmines would be effective; therefore, because most major producers of APL did not participate in the Ottawa Process, the British refused to embrace the process.

- *Level II*

Several EU Member States openly had supported the Canadian initiative to have a Conference in Ottawa in October 1996 and became involved in preparation for the meeting. One of these supporters, Ireland, held the EU Presidency in the second half of 1996. Ireland

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<sup>36</sup> On the American position on the Ottawa Process, see M. Wareham, *op.cit.*, p.213.



insisted on the importance that the EU have a united front at the Ottawa Conference. The Irish, therefore, persuaded the other EU Member States to adopt a Joint Action (96/588/CFSP) just prior to the Conference. The Joint Action reflected the division of the EU Member States. The EU Member States not only agreed to work actively toward a ban of anti-personnel landmines, but also stressed the importance of the universal adherence to the CCW. This Joint Action was ambiguous as it did not mention the Ottawa Conference and allowed the member states to pursue their preferred approach to the landmines issue. The Joint Action reflected the decision of Italy, Spain, Greece and more importantly the United Kingdom not to be full participants to the Conference but only attend as observers.

After challenging negotiations at the Ottawa Conference, the EU Member States agreed to support the Conference's final declaration. If any sense of cohesion had been felt with the adoption of the Joint Action and during the Ottawa Conference, this soon disappeared with Axworthy's unexpected invitation. In fact, Axworthy's surprise announcement "completely blew apart what was carefully constructed but already fragile consensus [within the EU]".<sup>37</sup> Upon the conclusion of the Ottawa conference, there were tense discussions in the CODUN about the Ottawa proceedings as well as what the EU had committed to when it agreed to support the final declaration of the Conference.

During the first months of the Ottawa Process there was no agreement within the EU on a common policy on APL. The Core Group of the Ottawa Process, which included Austria, Belgium, Germany, Ireland and the Netherlands, rapidly realized that the EU should be used as a forum to influence other EU Member States to join the Ottawa Process. Other EU Member States reiterated their position that any discussions on landmines should remain in the UN Conference on Disarmament. States such as Germany and Luxembourg supported a dual-tracking of both approaches. These divisions of opinions were especially visible when some states suggested that the EU support the American initiative to reinstate the issue of landmines on the CD agenda. This angered pro-ban EU Member States, which considered the American initiative as a "delaying and distracting tactic".<sup>38</sup> By the end of the Irish Presidency, a consensus on the question had not been reached.

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<sup>37</sup> Long, *op.cit.*, p.433.

With the Ottawa Process still in progress, the Netherlands, another pro-ban state, assumed the EU Presidency and made several tentative steps to pressure its European colleagues to address the APL issue. However, the Dutch Presidency was mostly preoccupied by the 1997 Intergovernmental Conference of Amsterdam and the landmines issue was not give a prominent place on the Presidency's agenda. Nevertheless, the Dutch did maintain the landmines issue in EU discussions including in the CODUN meetings they were chairing. The Dutch Presidency encouraged the two opposing blocks to reach an agreement, but both blocks resisted vigorously to any change in their position. In May 1997, the CODUN finally recommended that the EU consider the Ottawa Process as an option, but maintained that it should continue to negotiate within the CD.<sup>39</sup>

- *Level III*

Several EU Member States that strongly supported the Ottawa Process adopted national legislation reflecting their support for a comprehensive ban. Ireland, one of the first EU Member States to call for a comprehensive ban on landmines and the EU Presidency in the second-half of 1996, had cooperated with national NGOs to promote the ban. The Irish Campaign to Ban Landmines was launched in March 1994. In the following July, the Campaign was invited to do a presentation at the next meeting of the Foreign Affairs Committee of the Parliament and to discuss the matter with the Ministry of Foreign Affairs.<sup>40</sup> Irish NGOs intensively lobbied both the government and the opposition and, in 1996, a private bill was introduced in parliament for a unilateral ban on anti-personnel landmines. Initially, the government opposed the bill, but following further pressure from NGOs and public opinion, a legislative ban on anti-personnel landmines, the *Explosive (Land Mines) Order*, was adopted in June 1996. The Order prohibited the manufacture, sale or import of landmines, but did not apply to Irish Defence Forces. Nonetheless, the Ministry of Defence was asked to draft a review on the potential effects of the adoption of a ban on the use of anti-personnel landmines by the Defence Forces.<sup>41</sup> Subsequently, the Irish government

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<sup>38</sup> *Ibid.*, p.435.

<sup>39</sup> *Ibid.*, p.435.

<sup>40</sup> "Ireland" in ICBL, *Landmines Monitor Report 1999 – Toward a Mine-Free World*, New York, Human Rights Watch, 1999.

<sup>41</sup> *Ibid.*

agreed to support the comprehensive ban of landmines and became a member of the Core Group of the Ottawa Process.

By the beginning of the Ottawa Process, two other states Belgium and the Netherlands were committed to a global comprehensive ban of landmines and strived to campaign for the Ottawa Convention in various international and European forums.<sup>42</sup> By the end of 1996, these two countries adopted strict regulations regarding landmines. In Belgium, the early support of the government for a comprehensive ban on landmines had been opposed by the Ministry of Defence, which felt that by adopting such a strict position, Belgium would become isolated from its NATO allies. However, following the publication of studies questioning the use of landmines and suggesting theoretical arguments refuting the necessity of the use of APL, the Belgian Minister of Defence, Leo Delcroix agreed to support the comprehensive ban. Delcroix also believed that Belgium could become a symbol in the international community and gave his full support to the pro-ban stance of the Belgian government.<sup>43</sup>

During its EU Presidency, the Dutch government attempted to convince its EU colleagues to support the Ottawa Process. In the mid-1990s, both the Dutch Parliament and the Dutch Campaign to Ban Landmines had exerted strong pressure on the government to modify its policy on landmines. In August 1995, prior to the first session of the Review Conference, the Ministers of Foreign Affairs, of Defence, and for Development Cooperation stated in a letter to the Parliament that a comprehensive ban of landmines was, at this time, unrealistic due to the lack of international support.<sup>44</sup> They also noted that the use of landmines by the military was still justifiable. However, a few months later, the government finally surrendered to mounting parliament pressure: the Ministry of Defence was asked to review the Dutch armed forces' need of landmines. The findings of the review convinced the government to ban the use of landmines. In March 1996, the Netherlands adopted a comprehensive ban on the use and possession of landmines.

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<sup>42</sup> See "Belgium" and "Netherlands" in ICBL, *Landmines Monitor Report 1999 – Toward a Mine-Free World*, New York: Human Rights Watch, 1999.

<sup>43</sup> See "Belgium" in *Ibid.*

<sup>44</sup> See "Netherlands" in *Ibid.*

Prior to the first Ottawa Conference, Germany had made clear statements that supported a comprehensive ban on landmines. First, in April 1996, the federal Armed forces totally and unconditionally relinquished the right to use anti-personnel landmines; German stocks were destroyed immediately. In July 1996, the Minister of Foreign Affairs, Klaus Kinkel introduced a “Seven-Point Action Program on Anti-personnel Mines” that *inter alia* called for an international ban on APL. Germany’s early support for a comprehensive ban was facilitated by a number of factors. First, Kinkel personally campaigned for a total ban and maintained close relations with the Canadian Foreign Minister Axworthy. Second, Kinkel’s party, the Free Democratic Party, which was part of the coalition forming the German government, was also openly pro-ban. Third, in contrast with many other EU Member States, the Germany Ministry of Defence had not opposed the idea of a comprehensive ban.<sup>45</sup>

With the disappointing results of the Review Conference, the French government had also been pushed by public opinion to review its position. Before the beginning of the Ottawa Conference in October 1996, France announced that it would ban the use of anti-personnel landmines except in cases of absolute necessity to protect its armed forces.<sup>46</sup>

At the end of the Review Conference, the UK had endorsed a major policy shift: it would support a ban on the use of anti-personnel landmines rather than restrictions on the use. Yet, it also made clear that it would only sign a mine ban treaty that was agreed by all members of the UN. The UK thus remained reticent to support the Ottawa Process arguing that the Conference on Disarmament was the most appropriate forum to develop an international instrument to ban the use of these weapons. In January 1997, the debate on anti-personnel on landmines returned to the forefront of British politics. The media widely reported on a visit of Diana, Princess of Wales, to mine-infested regions of Angola for the British Red Cross. This visit as this was seen as an endorsement of the Labour party to support an international ban on landmines. While the Princess’ involvement in the landmines issue and her subsequent endorsement of the a worldwide ban on landmines was applauded by the Labour party, the NGO community and the Core Group of the Ottawa Process, a number of Conservative backbenchers criticized the Princess’ visit and statement by saying that the

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<sup>45</sup> Long and Hindle, *op.cit.*,p.254.

position of the British government had been extremely careful and that her comments were not aligned with government policy.<sup>47</sup> Throughout 1997, the Princess continued to work on the landmines issues with the British Red Cross and the Halo Trust, a UK NGO that specialized in the removal of anti-personnel landmines. While the Princess' commitment to help landmines victims did not have a direct impact on the position of the Conservative government, it had two effects. First, with Diana's visit to Angola and the criticism that followed, the difference between the policy of the Conservative party and the Labour policy on a comprehensive ban were highlighted. Second, British public opinion became increasingly aware of the debate regarding the ban on landmines and the British government's position. In fact, "the Diana effect" brought exposure to NGOs such as the Halo Trusts and how their work would be made more effective by the adoption of a world-wide ban on landmines.<sup>48</sup>

#### ***4.5 En route to Ottawa: spring 1997-December 1997***

In April 1997, the EU remained divided as to a comprehensive ban on landmines. However, by June 1997, France and the United Kingdom had shifted their position toward the Ottawa Process. Both these states were now full participants in the next meeting of the Ottawa Process organized in Brussels.

- *Level I*

In late spring 1997, Austria produced and disseminated another version of the draft treaty to the ever increasing number of states that formed the Core Group. By June 1997, France and the United Kingdom as well as Portugal had agreed to join the Core Group of the Process. Brazil, Malaysia, New Zealand, Slovenia and Zimbabwe had also decided to support the Ottawa Process. From 24-27 June 1997, Belgium hosted an international conference where approximately 153 states rallied to the support a treaty banning landmines. The ICBL pressured the government to accept a treaty with no exceptions, no reservations, and no

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<sup>46</sup> Chabasse, *op.cit.*, p.64.

<sup>47</sup> On the reactions regarding the Princess of Wales' visit to Angola see:  
<http://www.guardian.co.uk/uk/2000/jan/03/monarchy.freedomofinformation> accessed on 11/10/2007

<sup>48</sup> Interview with an official from an EU Member States' Mission to the UN, New York, 20/06/2006

loopholes. All 15 EU Member States were present at the Brussels Conference, with only Finland participating as an observer. At the end of the Conference, the Brussels Declaration was adopted by 97 states. The Declaration welcomed the convening of an international conference in September by Norway to negotiate a treaty banning landmines based on the Austrian draft treaty. Thirteen EU Member States signed the declaration at the end of the conference and agreed to go to Oslo. Finland and Greece were the only two EU Member States not to sign the Brussels declaration.<sup>49</sup>

By the end of the Brussels Conference, several states that had favoured the Conference on Disarmament rather than the Ottawa Process began to reconsider their positions as little progress had been made in the Conference. Yet, a major actor, the United States, remained convinced that the treaty should be negotiated in the Conference on Disarmament. The US had attended all Ottawa process meetings, but only as an observer. The United States remained convinced that the treaty should be negotiated in the Conference on Disarmament. Although the US was present in Brussels in June 1997, it did not participate in the Brussels Conference, nor sign the Brussels declaration. The American delegation, in fact, held various bilateral meetings during the Brussels Conference in the attempt to persuade several states to focus on the Conference on Disarmament rather than the Ottawa Process. However, these efforts seemed to be vain as several states including four important EU Member States, France, the UK, Italy, and Spain decided to join the Ottawa Process in Brussels. The success of the Brussels Conference prompted the US delegation to realize that the Ottawa Process might actually succeed. On 18 August 1997, after difficult domestic negotiations, the United States announced their intention to officially join the Ottawa Process. While the Americans stated that while they would work “with the other participating nations to secure an agreement that achieves our humanitarian goals” at Oslo, they would also make sure that national security interests were protected.<sup>50</sup>

When negotiations opened in Oslo on 1<sup>st</sup> September 1997, 87 states began negotiations on the final version of the ban treaty. For the first time in the Ottawa Process, the ICBL was permitted to have a delegation and to participate as an observer. The ICBL had been present

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<sup>49</sup> See Lawson, *op.cit.*, pp.169-171.

at all the meetings of the Ottawa Process, but was often only allowed to attend only the public sessions and was required to leave the room when formal negotiations began. Despite the opposition of a number of states, the Norwegian government, which was hosting the conference, decided to allow the ICBL representatives to participate as observers; this granted them the right to speak during the negotiations.

The Oslo Conference began with the election of Jacob Selebi, the South African ambassador to the UN in Geneva, as the chairman of the Conference. Furthermore, participants agreed that decisions should be based upon a two-thirds majority vote. As elected chair of the Conference, Ambassador Selebi decided not to spend time on opening statements. He wished that the first week of negotiations focused on reviewing the Austrian draft treaty and pointing out the contentious issues. He also asked the participants to deliver their proposed amendments in the first three days of negotiations. Following that working plan, more detailed negotiations were scheduled for the second week. The third week would be spent finalizing the text.

Negotiations were difficult at Oslo. This was particularly due to the presence of the United States. During the first week of negotiations, the Americans made several propositions for changes and exceptions to the treaty. First, they desired a treaty that would not only include a geographical exception for the use of landmines in Korea, but also a change of in the definition of landmines that would allow the use of mixed-system anti-tank mines. Second, the US delegation also asked for a deferral period for compliance with certain provisions as well as the right to withdraw during certain armed conflicts.<sup>51</sup> While some of amendments were supported by states such Australia and Japan, most of the American proposals were dismissed by the end of the second week of negotiations.

At the beginning of the last week of the Oslo Conference, once the treaty had already been negotiated, the American delegation asked for a twenty-four hour delay to see if a

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<sup>50</sup> See Wareham, *op.cit.*, pp.234-235, and US Decision to Join Ottawa Process on Landmines, US Statement, "United States to join Ottawa Process", Statement by White House Press Secretary, 18 August 1997, in *Disarmament Diplomacy*, Issue no.17, July-August 1997.

<sup>51</sup> See Wareham, *op.cit.*, pp.234-235

compromise could be found. Many pro-ban actors including the ICBL feared that states would succumb to the pressure of the superpower.<sup>52</sup> This fear was accentuated when Canada, which had instigated the Ottawa Process, supported the American request. There was also an apprehension that the United Kingdom would support the Americans. However, the UK delegation remained silent on the issue. Most EU Member States fiercely defended the position that the treaty should not include any exceptions. The US delegation was unwilling to compromise on three specific issues: the right of withdrawal, the deferral period and the right to use anti-tank systems. Despite intense discussions between the American President Bill Clinton and the Canadian Prime Minister Jean Chrétien, a compromise could not be reached on these issues. The American amendments were eventually withdrawn.<sup>53</sup> On 17 September 1997, after three weeks of intense negotiations, a Convention that comprehensively banned landmines was adopted by delegates without a vote.

In December 1997, to the surprise of many states, of the ICBL and other NGOs, 122 states including 14 EU Member States signed the *Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction* (the Ottawa Convention).<sup>54</sup> Finland was the only EU Member States not to sign the Ottawa Convention but declared that it would not object to the Ottawa Treaty. Nevertheless, the Finnish delegation declared that it wished the treaty would soon enter into force. It also reiterated that it wished to eventually comply with the Ottawa Convention.<sup>55</sup>

- *Level II*

In the summer of 1997, it became clear that the Americans and their supporters would be unsuccessful in their endeavour to include the landmines issues on the CD agenda.<sup>56</sup> Both France and the UK had now joined the rank of the pro-ban states. The shift in their position

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<sup>52</sup> NGO Committee on Disarmament, Peace and Security with the cooperation of the UN Department for Disarmament Affairs and the UN Department of Public Information, *The Future of Disarmament. Banning Anti-Personnel Land Mines: The Ottawa Process and Beyond*, Edited transcripts of the Panel Discussion at the United Nations 21 October 1997, United Nations, New York, 1998.

<sup>53</sup> See ICBL, *Landmines Monitor Report 2000 – Toward a Mine-Free World*, New York: Human Rights Watch, 2000.

<sup>54</sup> On the Ottawa Convention, see ICRC, *Banning anti-personnel mines: The Ottawa treaty explained*, Geneva, ICRC, 1998.

<sup>55</sup> Finnish Ministry of Foreign Affairs, *Press Release*, No.352, December 1997



was confirmed when, in May 1997, the German, French and British Ministers of Foreign Affairs jointly stated that they would give priority to the early conclusion of a legally-binding international agreement to ban the use, stockpiling, production and transfer of landmines<sup>57</sup>. Following the change in the UK and French position, Italy and Spain, which had been lukewarm toward the Ottawa Process, considered joining the process and attended the Oslo conference. However, Greece and Finland maintained their stance against a comprehensive ban on landmines.<sup>58</sup>

With the opening for signature of the new ban-treaty approaching, Luxembourg, which now held the EU Presidency, suggested the adoption of a new reinforced Joint Action on landmines. Luxembourg argued that the EU could not afford to remain silent toward the Ottawa Process. The pro-ban Luxembourg, contrary to the last two presidencies Ireland and the Netherlands, had supported a dual-tracking approach of the Ottawa Process and the CD. This position made it easier for Luxembourg to discuss with the two camps. The pro-ban states saw an ally in Luxembourg. Conversely, Finland and Greece agreed to hold discussions with Luxembourg as they felt that it would not coerce them to adhere to the Ottawa Process. On a few occasions during the CODUN meetings, Luxembourg supported the EU Member States more reluctant to the ban to ensure that these states would at least still be part of a dialogue.<sup>59</sup>

Shortly after the end of the Oslo Conference, Greece agreed to sign the Ottawa Convention. This left Finland as the only EU Member State that did not support a comprehensive ban. Finland, usually considered as a state highly involved on humanitarian and development assistance issues, felt pressured by its European colleagues to shift its position. However the Finns insisted that it was pointless to sign a treaty that they could neither ratify nor respect. In addition, they would not agree to support an EU joint action that they could not comply with. Nevertheless, recognizing the importance of consensus being reached within the EU,

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<sup>56</sup> See Wareham, *op.cit.*, pp.227-228.

<sup>57</sup> Long, *op.cit.*, p.436.

<sup>58</sup> See P. Chamberlain and D. Long, "Europe and the Ottawa Treaty: Compliance with Exceptions and Loopholes" in R. Matthews, B. McDonald and K.R. Rutherford (eds.), *Landmines and Human Security*, Albany, State University of New York Press, 2004, pp. 81-84. and Z. Lachowski, "The CD and the Ottawa Process: Rivals or Partners", *UNIDIR Newsletter*, Special Issue on Landmines, 3, 1997, pp.10-14.

<sup>59</sup> Long and Hindle, *op.cit.*, pp.260.

Finland made efforts not to undermine the EU's attempts to find a cooperative solution on the APL question.<sup>60</sup>

A few days before the opening of the Ottawa conference to sign the Ottawa Convention, the EU agreed to adopt three Joint actions regarding landmines. Two of the Joint Actions, 97/818/CFSP and 97/819/CFSP were adopted to support activities of the Southern Africa Development Conference (SADC) and of the International Committee of the Red Cross (ICRC). But it was the Joint Action 97/817/CFSP that truly reflected that the EU Member States were still unable to find a common voice on the Ottawa Process. This Joint Action extended the moratorium already in place, but it did not prohibit the use or stockpiling of anti-personnel landmines. However, the adoption of this Joint Action ensured that even the potential non-signatories would be bound to respect the extended moratorium. In addition, although the EU welcomed the Ottawa Convention, it did not make any reference to the endorsement of the Ottawa Process and its resulting ban-treaty. Due to Finland's opposition to a comprehensive ban and Greece's reluctance to sign the ban treaty, the Joint Action may very well have not been initiated.

- *Level III*

Luxembourg, which held the EU Presidency in the last few months of the Ottawa Process, played a significant role in creating a rapprochement between EU Member States that supported the Ottawa Process and those that favoured the CD. Luxembourg was neither a producer nor an exporter of anti-personnel landmines and in April 1996, the Minister of Foreign Affairs, Mr. Poos and the Minister of Public Forces, Mr. Bodry, announced their support for an immediate ban on the production, stockpiling, export and use of anti-personnel landmines.<sup>61</sup> Luxembourg fully participated to the Ottawa Process but remained convinced that the Conference on Disarmament could produce tangible results.

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<sup>60</sup> *Ibid.*, pp.260-261.

<sup>61</sup> See "Luxembourg" in ICBL, *Landmines Monitor Report 1999 – Toward a Mine-Free World*, New York: Human Rights Watch, 1999.

The role of Luxembourg in negotiations at the EU level should not be overlooked; however, there was a turning point in the negotiations when the United Kingdom and France joined the Ottawa Process in spring 1997. A number of domestic factors explain why both countries agreed to endorse the comprehensive ban.

The British General Election of May 1997 brought a major shift in the UK's position. Prior to the election, the Labour Party strongly affirmed its commitment to a comprehensive ban. But it was the Conservative government's reservation about the Ottawa Process and a comprehensive ban that came under public scrutiny during the election campaign. Although in the last few months before the election John Major's government had taken a number of steps toward a total ban, such as the adoption of a comprehensive moratorium on the export of landmines and the destruction of the British armed forces' stocks of "dumb" mines, it was still reluctant to join the Ottawa Process.<sup>62</sup>

With the Labour's victory in May 1997, British policy on landmines rapidly shifted. A number of Labour MPs strongly supported the Ottawa Process and comprehensive ban on landmines including the new Secretary of State for Foreign Affairs and the Commonwealth Robin Cook and the new Secretary of States for International Development, Claire Short (who had actively worked in the UK pro-ban campaign). At the end of the Brussels Conference, the UK agreed to attend the Oslo Conference and encouraged other states including its EU partners to join the Ottawa Process. Contrary to what many had suspected, the British did not support the American position that the convention should include some exceptions. This was also surprising as the British Armed Forces and some voices within the Ministry of Defence continued to insist on the military utility of landmines<sup>63</sup>. Nevertheless, in December 1997, the United Kingdom signed the Ottawa Convention.

Lastly, the shift in the French position was shaped by two events in the spring of 1997. Firstly, the fact that the newly elected British government supported not only the comprehensive ban, but also the Ottawa Process could not be ignored by Matignon and the

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<sup>62</sup> Long and Hindle, *op.cit.*, p.237.

<sup>63</sup> Bowers and Dodd, *op.cit.*, pp.11-17.

Élysée. Secondly, in June 1997, the Socialist Party won the parliamentary elections. Initially, the new Prime Minister Jospin had been a pro-ban supporter. In 1995, the Socialist party had introduced a draft to act toward a comprehensive ban. The new government included several pro-ban supporters which were placed in key posts such as in the Ministry of Defence and in the Ministry for Cooperation and for Development.<sup>64</sup> Three weeks after the elections, France announced that it would sign the international treaty banning landmine and in Oslo, France strongly defended the comprehensive ban, especially against the United States' attempts to modify the treaty.

#### **4.6 Conclusion**

This first case study suggests that the EU struggled to achieve internal effectiveness and thus had little external effectiveness. Up until the last phase of negotiations, division on the issue of a comprehensive ban was clearly visible. Although all EU Member States except Finland signed the Ottawa Convention, the EU member failed for a long period of time to agree on a common policy on landmines. In the end, all EU Member States, even the non-signatory, gave their support to the Ottawa Convention.

This case study also revealed factors affecting the EU's effectiveness at three different levels of negotiations. This analysis has shown that a number of factors increased the European Union's effectiveness. The position of France, Germany and the UK regarding the ban had a sharp influence on the EU's effectiveness: Germany's early support for the Ottawa Process was considered crucial by the pro-ban movement. In addition, once the UK and France had joined the Ottawa Process in June 1997, several EU Member States that had been more reluctant to join the Process, decided to give their full support for the adoption of a comprehensive ban. The role of the ICBL and the pressure of public opinion on governments to change their landmines policy certainly also had an effect on the EU's effectiveness.

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<sup>64</sup> Chabasse, *op. cit.*, p.66.

This chapter has also revealed factors that hindered the EU in being united in negotiations on landmines. First, the fact that the Conference on Disarmament was based on consensus represented a clear obstacle for the pro-ban EU Member States. Second, the position of United States may explain why the EU did not initially support to the Ottawa Process: some EU Member States strongly supported the US initiative to revive negotiations on landmines in the Conference on Disarmament. Third, this case has revealed that opposition of the ministry of defence to support a comprehensive ban played a key role in shaping the position of several EU governments.

This case has shown a small number of EU Member States, including Austria, Belgium and the Netherlands, were deeply committed to achieving a comprehensive ban and worked actively within the UN, but also in the Ottawa Process to encourage other EU Member States to take a stance on the issue. However, ultimately, the European Union's role as an actor was quite limited in the negotiations on the ban on landmines. The successful completion of an agreement which prohibited landmines should be attributed to the work of specific EU Member States rather than to the contribution of the European Union.

## **The Illicit Trade of Small Arms and Light Weapons: A Missed Opportunity for the EU?**

### ***5.1 Introduction***

Following the success of the international efforts to ban landmines, various international actors including the United Nations, numerous EU states, and NGOs believed that the international community should use the momentum to ban landmines and to address another pressing human security problem: the proliferation of small arms and light weapons (SALW). In contrast to the case of landmines, the positions of the EU Member States on the SALW issue seemed to converge. In fact, the EU and its Member States had been active on SALW issues since the late 1990s. In 1997, the EU adopted a Programme for Preventing and Combating the Illicit Trafficking in Conventional Arms. A year later, the EU Code of conduct on Arms export that covered SALW exports was introduced. When the issue of SALW was introduced on the UN agenda, the EU was one of the most vocal actors to support UN action taken to reduce the proliferation of this type of weapon: the EU supported the idea of strong international guidelines to limit the spread of SALW. However, since 1997, the international community has failed to adopt any legally binding agreement on this issue or even to agree to international guidelines in this area.

This case study examines the factors that have influenced the EU's effectiveness as an actor in UN negotiations regarding the illicit trade in SALW. This analysis is divided into four sections. First, the emergence of the question of SALW on the international agenda and the initial response of the EU to this new challenge is examined. Then two different phases of negotiations on the question of SALW at the United Nations are analyzed (see Table 5.1). This first phase of negotiations will be examined in two parts: the first section covers the first years (1998-2001) of the international campaign to address the problem of SALW. Negotiations during the UN Small Arms Conference of 2001 constitute the second part of

this phase. The second phase of negotiations that will be analyzed also includes two parts. The first section examines the various negotiations (from 2001 to 2006) that followed the UN Small Arms Conference. The second section of this phase covers the UN Review Conference of 2006. In each phase, all three levels of negotiations- international (Level I), EU (Level II) and domestic (Level III)- are considered. The chapter concludes by identifying factors that might have influenced the EU's effectiveness as an actor on the issue of SALW.

**Table 5.1 SALW Case: Phases of Negotiations**

Phase of Negotiations	
<p>Phase 1: <i>Negotiations from January 1998 to June 2001 (Part I)</i></p> <p>and</p> <p><i>2001 Small Arms Conference (Part II)</i></p>	<p>■ <b>May 1998, February and July 1999-</b> The Group of Governmental Experts on Small Arms holds three formal sessions.</p> <p>■ <b>28 February-3 March 2000:</b> First session of the Preparatory Committee for the 2001 Small Arms Conference</p> <p>■ <b>8-19 January 2001:</b> Second session of the Preparatory Committee for the 2001 Small Arms Conference</p> <p>■ <b>19-30 March 2001:</b> Third session of the Preparatory Committee for the 2001 Small Arms Conference.</p> <p>■ <b>9-20 July 2001:</b> The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects is held in New York. The <i>Programme of Action (PoA)</i> is adopted.</p>
<p>Phase 2: <i>Negotiations from January 2001 to June 2006 (Part I)</i></p> <p>and</p> <p><i>the UN Small Arms Review Conference 2006 (Part II)</i></p>	<p>■ <b>7-11 July 2003:</b> First Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects is held in New York.</p> <p>■ <b>11-15 July 2005:</b> Second Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects is held in New York.</p> <p>■ <b>9-20 January 2006:</b> The Preparatory Committee of the 2006 Review Conference meets in New York.</p> <p>■ <b>26 June-7 July 2006:</b> The UN Small Arms Review Conference is held in New York. The Conference fails to adopt an outcome document.</p>

## **5.2 The Global challenge of small arms and light weapons**

The concerns for the spread of the SALW attracted the international community's attention only at the beginning of the 1990s. Small arms and light weapons constitute the types of armament that are most frequently used in conflicts. SALW are responsible for the majority of armed conflict deaths and are used in more than 40% of homicides worldwide.<sup>1</sup> SALW are commonly used by armed forces and police forces in most countries and can also be legally owned by private citizens in several states. In contrast to other types of armaments such as nuclear warheads, the exact number of SALW in circulation in the world is difficult to establish. In 2006, the estimated number of SALW in existence was around 640 million.<sup>2</sup> However, estimations of the number of SALW are constrained because of the lack of data available.

Although they are the most frequently used weapons since 1945, SALW were almost completely left out of the disarmament agenda during the Cold War. Krause argues that there are three main reasons why these weapons were overlooked. First, the effects of SALW were limited to certain conflict zones and not regarded as a global problem. Second, most disarmament instruments during the Cold War were developed to respond to nuclear threats and other weapons of mass destruction, threats that appeared more urgent than the SALW problem. Third, conventional weapons were not considered as a proliferation issue: the right to self-defence included the right to possess conventional weapons such as SALW. Furthermore, small arms were legally used by civilians and the question of regulation was considered a national question<sup>3</sup>. However, with the end of the Cold War and the changing dynamics in world politics that followed, the problem of SALW started to generate an interest in the international community. The fact was that small arms were massively used in the internal conflicts that erupted in the 1990s and even directly contributed to the expansion of these conflicts. The effects of small arms and light weapons could no longer be ignored.

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<sup>1</sup> See Small Arm Survey, *Small Arms Survey 2006 – Unfinished Business*, Oxford, Oxford University Press, 2006.

<sup>2</sup> *Ibid.*

<sup>3</sup> K. Krause, *The Challenge of Small Arms and Light Weapons*, 3<sup>rd</sup> International Security Forum and 1<sup>st</sup> Conference of the PfP Consortium of Defense Academies and Security Studies Institute, "Networking the Security Community in the Information Age", Workshop 5D: Arms Control and Disarmament, Online Publication, Zurich, 19-21 October 1998.



The global trade of SALW exploded after the end of the Cold War. Many ex-satellite states of the two superpowers were left with a large surplus of weapons accumulated as a precaution to possible war. These amounts often surpassed basic security needs and many countries, especially those from the former Soviet bloc, began selling their arms surplus to other states and to non-states actors. Furthermore, during the Cold War, the global arms trade was conceived in geo-political terms. However, with the collapse of the Soviet Union, arms producers and suppliers could no longer rely on their traditional clients and struggled to find new markets to sell their products. The law of supply and demands dictated the arms trade, which lead to the depoliticization and to the increased commercialization of this trade. In the end, the combination of these two phenomena produced weaker controls and loosened the tacit Cold War agreement that arms should be sold only between states.<sup>4</sup>

The SALW issue became part of the wider human security agenda that emerged at the beginning at the 1990s. As in the landmines case, NGOs and international organizations were confronted daily with the effects of the use of SALW. In the early 1990s, several UN peacekeeping and peace-building operations in states such as Somalia, Rwanda and Bosnia and Herzegovina were directly affected by the spread of SALW. In a report in 1999, the UN Institute for Disarmament Research identified the spread of weapons among combatants and non-combatants entities as a major source of instability in societies, causing internal conflicts and providing an obstacle to long term stability and peace.<sup>5</sup> The International Committee of the Red Cross (ICRC) has highlighted the following features of SALW to explain why these weapons have played such a major role in internal conflicts. First, SALW enjoy a higher durability than other weapons and yet require minimal maintenance. These weapons are easy to handle and do not require logistical support or elaborate training. Second, SALW are easy to transport and can be carried by individuals. Third, SALW are legitimately used by armed and police forces in most countries but may also be legally owned by individuals. Fourth, the production of small arms for military, police and civilians use has meant that the number of suppliers has burgeoned; the wide availability of these weapons has also caused the prices to

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<sup>4</sup> J. Spear, "Arms and Arms Control" in B. White, R. Little and M. Smith (eds.), *Issues in World Politics*, 3<sup>rd</sup> ed., Houndmills, Basingstoke, Palgrave Macmillan, 2005, pp.105-106.

<sup>5</sup> See M. Donowaki, "Prologue" in L. Lumpe (ed), *Small Arms Control: Old Weapons, New Issues*, Aldershot, UNIDIR-Ashgate Publishing Limited, May 1999, p.xvi.

fall below the cost of production. Finally, the technology advancements in the arms industry have meant that a single weapon can become a lethal threat to society.<sup>6</sup>

These factors played a role in the emergence of the SALW issue on the international agenda. The issue of global arms trade was first addressed at the UN in the 1960s and the 1970s. Ten years later, during the Third Special Session of the General Assembly on Disarmament (SSOD III), the question of “demand and supply” of conventional weapons was also discussed. At this Special Session the Federal Republic of Germany in a statement on behalf of the twelve Member States of the European Community<sup>7</sup> joined other actors such as the UN Secretary-General and the League of Arab States in requesting the international community to examine the role of the production and transfer of conventional weapons in international security problems. These actors also emphasized the need for international cooperation to control the proliferation of these weapons<sup>8</sup>.

A few months later, at the Forty-Third Session of the General Assembly, the first UN resolution on arms transfer<sup>9</sup> (A/RES/43/75-I) was adopted. Based on resolutions introduced by Italy and Columbia, this resolution expressed the conviction of the international community that all aspects of arms transfers deserved serious consideration. For the first time, the UN member states recognized that arms transfers had potential effects in areas where tension and internal conflict threatened international peace and security and had potential negative effects on the process of peaceful social and economic development of populations. The resolution also highlighted the increasing impact of the illicit trafficking of arms.

Following the First Gulf War in May 1991, President Bush was the first world leader to appeal to major suppliers of conventional arms, which included all the permanent members

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<sup>6</sup> ICRC, *Arms availability and the situation of civilians in armed conflict: a study presented by the ICRC*, Geneva, ICRC Publication, 1999, p.6.

<sup>7</sup> See UNGA Document, A/S-15/43

<sup>8</sup> G. Uribe de Lozano “The United Nations and the Control of Light Weapons” in J. Boutwell and M.T. Klare (eds.), *Light Weapons and Civil Conflict. Controlling the Tools of Violence*, Lanham, Rowman & Littlefield Publishers Inc., 1999, p.163.

<sup>9</sup> See UNGA Resolution A/RES/46/36

of the UN Security Council, to observe a general code of responsible arms transfer<sup>10</sup>. A few months later the UN Register of Conventional Arms was established with the adoption of a resolution entitled “Transparency in armaments”. The Resolution also reaffirmed the vital role of the United Nations in encouraging efforts to reduce the proliferation of the illicit trafficking of conventional arms.

At the beginning of the 1990s, the issue of the illicit trade of conventional arms, more particularly of small arms and light weapons, was becoming increasingly present on the UN agenda. More states including the members of the Security Council began to encourage the international community to act to control the spread of SALW. Concrete efforts to achieve international agreements on the illicit trade in small arms were to be revitalized in 1995 when the UN Secretary-General Boutros Boutros-Ghali became involved in the efforts to find solution to the problem of SALW. In the *Supplement to Agenda for Peace*, the Secretary-General highlighted the importance of addressing the issue of what he calls “micro-disarmament,” which he defined as the “practical disarmament in the context of the conflicts the United Nations is actually dealing with and of the weapons, most of them light weapons, which are actually killing people in the hundreds of thousands.”<sup>11</sup>

Following the Secretary-General’s appeal in the *Supplement to an Agenda for Peace* and due to growing concern for the negative effects of the SALW on peacekeeping operations, the UNGA adopted a resolution that requested the Secretary-General to create a panel of experts to examine the effects of SALW and to investigate “the ways and means to prevent and reduce the excessive and destabilizing accumulation and transfer of small arms and light weapons, in particular as they cause or exacerbate conflicts.”<sup>12</sup>

The Panel of Governmental Experts on Small Arms released its report in August 1997. The report was a comprehensive study of the causes and effects of the increasing stocks of SALW and gave specific recommendations for the prevention and reduction of the negative effects of the increasing weapon accumulation. One of the most important recommendations of the Panel was that the United Nations “should consider the possibility of convening an

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<sup>10</sup> US Department of State, Dispatch, vol. 2, no. 22, 03/06/1991.

<sup>11</sup> See UNGA Document A/50/60 – S/1995/1, Paragraph 60.

international conference on the illicit arms trade in all its aspects.”<sup>13</sup> In December 1997, only a few days after the opening for signature of the Ottawa Convention, the UNGA asked the Secretary-General to create a new group of governmental experts on SALW and to start planning an international conference on the illicit trade of small arms.<sup>14</sup>

### ***5.3 Negotiations from 1997 to 2001 and the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects***

It would take several years of negotiations before the UN member states would agree on the modalities of a UN conference on the illicit trade of SALW. Several rounds of intense negotiations were required to find consensus among the UN member states on what issues should be addressed in the conference. During this preparation period, several international actors, including the European Union, strongly advocated the need to adopt international guidelines to curb the spread of SALW. Finally, a UN Conference on Small Arms was convened in July 2001. During the two weeks of intense negotiations in New York, the EU strongly defended its priorities and the need for the international community to address the SALW issue.

- *Level I*

#### *Part I: Negotiations from January 1998 to 2001*

The year 1997 was an eventful year for advocates of human security issues. The international efforts to ban the use of one conventional weapons, anti-personnel landmines, had lead to creation of an international convention that was signed by more than 120 countries in Ottawa in December 1997. The issue of landmines and SALW having a number of similitudes,

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<sup>12</sup> See UNGA Resolution A/RES/50/70 B

<sup>13</sup> See UNGA Document A/52/298, p.23

<sup>14</sup> See UNGA Document A/52/38J

SALW were already considered as the next human security issue that the international community should address.

Several countries and NGOs involved in the Ottawa process began envisaging a similar type of process to tackle the SALW issue. In fact, during the signing ceremony of the Ottawa Convention, NGOs delegates held a working session on SALW and circulated the idea of an Ottawa process in this field. However, in contrast to the landmines case, the idea of the adopting of a comprehensive ban of SALW was not considered. Indeed, small arms were used by armed forces, police forces and, in several states, legally owned by civilians. The international community quickly realized that to respond to the SALW issue, the approach would need to be much broader and address multiple SALW-related issues.

A few months after the Ottawa Process, a group of like-minded states (including Austria and Belgium) that had worked actively on the landmine issues organized three meetings on SALW issue: the meetings took place in Norway (July 1998), in Canada (August 1998) and in Belgium (October 1998). Several EU Member States including France, Germany and the UK were actively involved in these meetings. At the United Nations, in April 1998, the Secretary-General appointed a new group of governmental experts, the Group of Governmental Experts on Small Arms. One of the first tasks of the new Group of experts was to consult UN member states regarding the convening of an international conference on SALW. In fact, in December 1998, the UNGA had agreed to convene an international conference on the illicit arms trade by 2001.<sup>15</sup> The Group of Governmental Experts on Small Arms held three formal sessions: one in May 1998 and two other sessions in February and in July 1999. The Group not only considered the views of UN member states regarding an international conference on small arms, but also consulted with academic experts, NGOs delegates, and representatives from the arms industry.

In April 1999, Germany presented the EU position to the Group of Experts. The European Union believed that “[t]he conference should address both the preventive and reactive aspects of the small arms problem and envisage effective ways and means to combat and contribute to ending the destabilizing accumulation and spread of small arms; to contribute

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<sup>15</sup> See UNGA Resolution A/RES/53/77 E

to the reduction of existing accumulations of these weapons to levels consistent with the legitimate security needs of countries; and to help solve the problems caused by such accumulations.”<sup>16</sup> Furthermore, in the EU’s view, the objective of the conference “could be politically binding guidelines or a legally binding instrument. The conference should equally adopt a programme of action encompassing all areas of possible international cooperation in small arms.”<sup>17</sup> A few months later, the Netherlands took the presidency of the UN Security Council and initiated a debate on the issue. Both France and the UK in their addresses to the UNSC highlighted the need for the international community to act on the problem.<sup>18</sup>

The EU clearly favoured an international conference on SALW that would achieve strong commitments. The European Union, supported by several states including Japan and Canada, also believed that the Conference should address broader questions of arms holding, inter-states transfer and assistance to countries in conflict<sup>19</sup>. The EU’s position was also supported by the creation of IANSA, the International Network on Small Arms in May 1999. The main aims of IANSA were to raise awareness about the impact of small arms and to convince governments to adopt specific measures to tackle the spread of SALW<sup>20</sup>. IANSA gave its full support to the UN initiative to convene an international conference on SALW and encourage the adoption of strong international commitments. However, a number of UN member states were apprehensive about the conclusion of international agreements on the issue. Several Latin American, Asian and Middle Eastern states wanted to limit the mandate of the Conference to combat of the illicit trade in small arms.

The United States was also reluctant to give its full support to an international conference that might address issues such as national legislation or transfer to non-states actors. The US had been very active in the early 1990s in acknowledging problems caused by the spread of small arms. In 1995, prior to the 50<sup>th</sup> General Assembly, President Clinton stressed the importance of addressing the issue of “grey markets” that equipped terrorists and criminal

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<sup>16</sup> See UNGA Document A/54/260

<sup>17</sup> *Ibid.*

<sup>18</sup> See UN Security Council Document S/PV.4048.

<sup>19</sup> Small Arms Survey “Chapter 5- Reaching Consensus in New York: the 2001 UN Small Arms Conference” in *Small Arms Survey 2002- Counting the Human Costs*, Oxford, Oxford University Press, 2002, p.210.

<sup>20</sup> See [www.iansa.org](http://www.iansa.org)

with firearms.<sup>21</sup> From 1996 to 1999, the US developed a comprehensive approach to tackle the proliferation of SALW including the adoption of a statute on arms brokering and of amendments to its Foreign Assistance Act to gain more control of arms exports.<sup>22</sup> However, this approach also included “red-lines” that defined areas that should not be discussed with regards to conventional weapons. These areas were mostly delimited to respond to the demands of the powerful arms industry and the pro-gun lobby.<sup>23</sup> In contrast to the EU’s position, the US and other key actors emphasized that they privileged national or regional approaches rather than the adoption of international guidelines to respond to the spread of SALW.<sup>24</sup>

In August 1999 the Group of Governmental Experts of Small Arms presented its report<sup>25</sup> in that it recommended that the conference should concentrate on developing international efforts to prevent, combat, and eradicate the illicit trade in SALW in all aspects. The Group argued that the main objectives of the Conference should include the development and strengthening of norms and measures at the international, regional and national level to prevent and to combat the illicit trade of SALW. The Group stressed that the Conference should mainly focus on the issue of the illegal arms trade, but also acknowledged the link between the legal transfers of SALW and the illicit trafficking of SALW and urged the Conference to consider this connection. Despite the reticence of some UN member states, in December 1999, a UNGA Resolution confirmed that a United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects would be convened in June/July 2001 and established a preparatory committee that would hold at least three sessions.<sup>26</sup>

The Preparatory Committee (PrepCom) held three tumultuous sessions between February 2000 and March 2001. The first session of the PrepCom (28 February-3 March 2000)

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<sup>21</sup> “Remarks by the President to the U.N. General Assembly”, 22 October 1995, The White House, Office of the Press Secretary, New York - <http://clinton4.nara.gov/WH/New/other/unspeech.html> accessed on 01/10/2006.

<sup>22</sup> See L. Bondi “U.S. Policy on Small Arms and Light Weapons”, *Naval War College Review*, Winter 2006, vol.59, no.1, pp.123-124; and L. Lumpe “U.S. Policy and the Exports of Light Weapons” in J. Boutwell and M.T. Klare, *Light Weapons and Civil Conflict. Controlling the Tools of Violence*, Lanham, Rowman & Littlefield Publishers Inc., 1999, pp.65-87.

<sup>23</sup> Bondi, *op.cit.*, p.123.,

<sup>24</sup> See Small Arms Survey, *op.cit.*, p.209.

<sup>25</sup> See UNGA Document A/54/258

achieved little as most of the robust discussions surrounded the procedural aspects of the conference including the participation of NGOs. Nevertheless, the states were invited to explain their position regarding a proposed programme of action (PoA) that would constitute the conference outcome document. States agreed on the need to adopt measures to address the illicit arms trade such as stronger border controls, effective enforcement of the UN arms embargoes and the development of measures in marking and tracing of SALW. All states also agreed that states had the right to acquire, export, and use SALW. However, issues such as national legislation and the transfer to non-state actors remained controversial.

At the second session of the PrepCon in January 2001, negotiations on the text of the programme of action began. A first draft of the PoA was issued a month before the session and outlined measures to be taken in areas such as the illicit manufacturing, acquisition, stockpiling and transfer of small arms, the collection and destruction of illicit and surplus small arms, civilian possession, post-conflict situations and transparency and exchange of information. A number of delegations including the United States expressed their objections at the inclusion of some of these issues. The document was also criticized for being too complicated and repetitive.<sup>27</sup>

In December 2000, the EU adopted a Plan of Action on small arms<sup>28</sup> hoping that most of its elements would be integrated in the PoA. The Plan of Action clearly reflected the priorities of the EU with regard to the Conference and the eventual programme of action. These priorities included a commitment to international law and human rights, an emphasis on the link between security and development, the promotion of strict national legislation to sanction the illicit possession of SALW and the adoption of global standards for marking of SALW. The EU also suggested convening a “Review Conference” of the programme of action in 2005. The EU Plan of Action was not completed soon enough to be integrated in the first draft of the PoA; however, some of the EU’s priorities were fully integrated into the second draft of the PoA proposed in February 2001.

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<sup>26</sup>See UNGA Resolution A/RES/54/54

<sup>27</sup>Small Arms Survey, *op.cit.*, p.208.

<sup>28</sup> See UNGA Document A/Conf.192/PC/21



During the first two sessions of the PrepCom, the European Union intensely campaigned for the introduction of stringent international commitments on SALW, commitments that would be consistent with the policies already adopted at the EU level. Other countries such as Australia and South Africa adopted a more reserved approach to the PoA, while some countries argued that the adoption of commitments at the international level might overlook the specific needs of various regions. Frictions between the EU and several states of the Southern African Development Community (SADC) became apparent during the PrepCom. A number of SADC countries including South Africa openly opposed the EU's suggestion to include strict international commitments in several areas, including export controls.

The second draft of the programme of action was more concise and received an encouraging reception at the third session of the PrepCom. The global support for the PoA, which was mainly due to the removal of most contentious issues contained in the first draft, was noticeably present in few months prior to the UN Small Arms Conference.<sup>29</sup> Negotiations at the Conference were nevertheless difficult and extremely demanding of certain actors, including the European Union.

## *Part II: The 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*

The *United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Aspects* began in New York on 9 July 2001. During the last session of the PrepCom, states had agreed that the first week of the Conference would be reserved for statements at the ministerial level. On the first day of the Conference, Belgium, speaking on behalf of the EU, stated the EU's priorities for the Conference: concrete results should be achieved in the implementation of exports controls and exports principles, in the development of an international instrument on marking, tracing, and brokering. The EU also believed that issues of management of stockpile and surpluses and their destruction, of the disarmament, demobilisation and reintegration of ex-combatants, and of assistance with the

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<sup>29</sup> Small Arms Survey, *op.cit.*, p.208.

implementation of the measures adopted should also be addressed. Finally, the EU also insisted on the importance of a follow-up to the Conference.<sup>30</sup> This strong position of the EU on a number of issues, particularly on export controls, arms brokering and transparency in arms exports and imports was warmly welcomed by numerous states as well as NGO delegates present at the Conference.

The reception given to the US statement given by John Bolton, the US Under-Secretary for State for Arms Control and International Security, a few hours later could not have been more of a contrast. Bolton was extremely critical of the programme of action and listed a number of aspects of the draft PoA that the United States could not support. Bolton clearly stated that the United States would not support a document that contained measures regarding the legal trade and legal manufacturing of SALW, the promotion of international advocacy activity by international organizations or NGOs, measures that would prohibit civilian possession of SALW (Bolton even evoked the American Constitutional right to bear arms) and measures limiting trade in SALW to governments. The United States also opposed a mandatory Review Conference or any legally binding instruments on SALW.<sup>31</sup> On most issues the EU and US positions were diametrically opposed.

During this first week of the Conference, the President of the Conference, the Colombian Ambassador Camilo Reyes Rodriguez, gave states the opportunity to comment on the latest version of the draft PoA. The President felt that only a new draft could achieve consensus.<sup>32</sup> On Monday 16 July, the President offered a first revised version of the draft PoA.<sup>33</sup> This new version integrated some issues reviewed during the first week of negotiations. However, a number of contentious matters remained in the document, including the civilian possession of small arms, export controls, the transfer to non-state actors, and a follow-up to the Conference. This revised version would be the centre of intense negotiations during the second week of the Conference. Agreements on a number of paragraphs had not been

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<sup>30</sup> See Statement by Louis Michel on behalf of the EU at the Conference on the Illicit Trade in Small Arms and Light Weapons in all its Aspects. New York, 09/07/2001.

<sup>31</sup> Statement by John R. Bolton, US Under-Secretary for State for Arms Control and International Security, UN Conference on the Illicit Trade in Small Arms and Light Weapons in all its Aspects, 09/07/2001.

<sup>32</sup> Small Arms Survey, *op.cit.*, p.218.

achieved by Thursday, 19 July and on the last day of the Conference, President Reyes presented a series of proposals that suggested using new language for problematic issues.<sup>34</sup>

The EU, which at beginning of the Conference had fervently defended its position, gradually agreed to abandon some of its priorities. The EU as well as Canada, Costa Rica, and several African countries had argued that the link between the illicit trade of SALW and the violation of human rights and international humanitarian law should be recognized in the programme of action. This position, however, was disregarded when it was fiercely opposed by a number of states including China which would not support an outcome document that contained a reference to human rights violations.<sup>35</sup> The EU also supported the adoption of strict exports criteria and suggested a set of criteria inspired by the EU Code of Conduct on Arms Transfer. The Arab League states and China vigorously opposed this set of criteria that were perceived as potentially restricting their access to SALW exports.<sup>36</sup> Finally, the term “export criteria” was not included in the final version of the programme. The EU and Canada supported a follow-up to the Conference that would not only review the implementation of the programme of action, but also examine the adoption of new measures. Again, this suggestion faced strong opposition and was not included in the PoA.<sup>37</sup> However, it was two other priorities of the EU, civilian possession and transfer to non-states group that became the most important obstacles to the achievement of consensus. This clear absence of consensus led to the prolongation of negotiations to the 21<sup>st</sup> July.

Indeed, negotiations on the programme of action continued late on the night of the 20<sup>th</sup> as obvious impasse remained on two major issues: transfer to non-state actors and civilian ownership. The Americans, who from the beginning tenaciously refused to support a programme of action that would cover these issues, offered to allow a follow-up conference in exchange for the removal of these two issues from the Programme. This offer did not please the African bloc, the region most affected by the proliferation of SALW, which

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<sup>33</sup> See United Nations, *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, New York 9-10 July 2001, New York, United Nations, A/CONF.192/L.5, 2001.

<sup>34</sup> See I. Berkol *La Conférence des Nations Unies de juillet 2001 sur les armes légères – Analyse des processus et de ses résultats*, Bruxelles, GRIP, 2001, p.25.

<sup>35</sup> Small Arms Survey, *op.cit.*, p.221.

<sup>36</sup> O. Greene “The 2001 UN Conference: A Useful Step Forward?” *SAIS Review*, vol.22, no.1, 2002, p.199.

refused to delete the two paragraphs. At 6.00 am on Saturday 21 July, the African countries submitted and accepted the deletion of the paragraphs on civilian possession and the sale to non-states actors. In exchange, they requested a strong statement by President Reyes that would explain their decision. In its final statement, President Reyes expressed his “disappointment over the Conference’s inability to agree, due to the concerns of one state, on language recognizing the need to establish and maintain control over private ownership of these deadly weapons and the need for preventing sales of such arms to non-state group.” He also added that Africa “had agreed only with the greatest reluctance to the deletion of proposed language addressing these vital issues” and that they did so “strictly in the interest of reaching a compromise the world community to proceed with the first steps at the global level to alleviate this common threat.”<sup>38</sup> The *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*<sup>39</sup> was formally adopted by consensus in the afternoon of Saturday, 21 July.

- *Level II*

As soon as the issue of SALW emerged on the international agenda, the European Union rapidly became an important advocate of the need to address this issue. EU activities in the area of development assistance, humanitarian aid, and conflict prevention were directly affected by the proliferation of SALW. More importantly several EU Member States were among the largest producers of SALW and quickly recognized that an increasing portion of their small arms production were being “recycled” and illegally sold on the global arms market. Discussion among EU Member States on the issue of small arms had been initiated in the late 1980s. Like the case of landmines, EU actions on small arms and light weapons would fall under the Common Foreign and Security Policy; the production and export of small arms remained within the competence of the EU Member States.<sup>40</sup> During the 1970s and 1980s, a number of measures regarding arms exports had been agreed in the European

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<sup>37</sup> Small Arms Survey, *op.cit.*, p.227.

<sup>38</sup> See United Nations, Annex- Statement by the President of the Conference after the adoption of the Programme of Action to Prevent and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its aspects. *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, New York, 9-20 July 2001. A/CONF.192/15, 2001.

<sup>39</sup> See UN Document A/CONF.192/15

Political Cooperation framework including decisions to establish arms embargoes.<sup>41</sup> However, the first step in addressing the small arms issue at the EC/EU level was taken in 1991, following the end of the Gulf War. The EC Council adopted seven criteria to be considered by Member States when governing arms exports. An eighth criterion was adopted in June 1992. These criteria covered issues such as the internal and regional situation in the country of final destination, the country's human rights record, its behaviour with regards to terrorism and the economic effects of the export on the purchasing country.<sup>42</sup>

The growing international awareness of the SALW at the international level in the mid-1990s influenced EU discussions on the issue. At the EU level, the Netherlands who, during its Presidency, drafted several proposals on how the EU should tackle the illicit arms trade, took the first concrete initiative. In June 1997, the EU Council of Ministers finally adopted a *Programme for Preventing and Combating Illicit Trafficking in Conventional Arm*.<sup>43</sup> This programme was a political declaration and not a legally binding agreement. Nevertheless, it provided a framework for addressing the SALW issues. It also reiterates the EU's support for international processes tackling the illicit arms trade and more specifically, for several UN initiatives in this area.

A few months later during its presidency of the EU, the United Kingdom convinced its European colleagues to agree to a code of conduct on arms exports. In February 1998, the United Kingdom, supported by France, proposed a first draft of the Code. Three months of intense negotiations followed in the COARM working group.<sup>44</sup> The EU Code of Conduct on Arms Exports was formally adopted by the General Affairs Council in June 1998. The Code of Conduct stemmed from the eight criteria agreed to by the EU Member States in 1991 and

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<sup>40</sup> See I. Anthony, "Appendix 8C- European Union approaches to arms control, non-proliferation and disarmament", *Sipri Yearbook 2001: Armaments, Disarmaments and International Security*, Oxford, Oxford University Press, pp.599-614.

<sup>41</sup> *Ibid.*, p.609.

<sup>42</sup> European Council, *Annex VII Declaration on non-proliferation and arms exports, Presidency Conclusions, Luxembourg 28 and 29 June 1991*, SN 151291, Brussels, Council of the European Communities, June 1991.; and European Council, *Additional criteria adopted in 1992 by the European Council of Ministers*, 27/06/1992, Lisbon.

<sup>43</sup> European Council, *European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Arms* 9057/97 DG E- CFSP IV, Brussels, 26/06/1997.

<sup>44</sup> Eavis and Benson, "The European Union and the Light Weapons Trade" in J. Boutwell and M.T. Klare (eds.), *Light Weapons and Civil Conflict. Controlling the Tools of Violence*, Lanham, Rowman & Littlefield Publishers Inc., 1999, p.94

1992 and is a politically, rather than a legally binding agreement. The Code includes two main sections: The first section capitalizes on the eight criteria adopted in 1991 and 1992 and sets guidelines that should govern arms exports by EU Member States. The second section proposes operative measures for notification and cooperation between the EU Member States on the grant of export licenses. It also suggests that each Member State should circulate a confidential annual report on its defence exports and on its implementation of the Code of Conduct to other EU partners.<sup>45</sup>

In December 1998, under the Austrian presidency, a “Joint Action on Small Arms and Light Weapons”<sup>46</sup> was adopted. This Joint Action suggested objectives and measures to combat the destabilizing accumulation and spread of SALW. It states that the EU “shall aim at building consensus in the relevant forums [e.g. the UN] for the realisation of [...] measures to prevent the further destabilising accumulation of small arms”. The Joint Action proposed the establishment of national inventories of legally owned arms owned by the authorities of EU Member States, the establishment of strict national arms legislation with regards to SALW and measures to increase transparency and openness. The Joint Action also provided financial and technical assistance to specific actions in the field of SALW including programmes and projects conducted by the United Nations.

With the adoption of these agreements, the EU developed a more harmonized approach to SALW. When the Panel of Experts began consultation on a programme of action in 2000, the EU had already defined a strong and united position regarding measures to combat the illicit trade of SALW.<sup>47</sup> Many elements of the various EU agreements were incorporated in the EU Plan of Action that was adopted under the French presidency in December 1999. France also ensured that the SALW was on the agenda of two summits with international partners. In December 1999, at the EU-US Summit, the EU and the United States issued a statement on the adoption of common principles on SALW and on an action plan. The EU

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<sup>45</sup> European Union, *EU Code of Conduct on Arms Exports*, Council document 8675/2/98 Rev.2, Brussels, 8 June 1998. On the Code of Conduct see also S. Bauer “The EU Code of Conduct on Arms Exports – Enhancing the accountability of arms exports policies?”, *European Security*, vol.12, nos. 3-4, 2003, pp.129-147.

<sup>46</sup> See *Joint Action of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons*, 1999/34/CFSP, *Official Journal of the European Communities*, L 9, 15/01/1999, pp.1-5.

and the United States pledged to enhance their cooperation and to support the UN Conference on Small Arms.<sup>48</sup> A few days earlier, the EU and Canada had established a joint working group on SALW and had agreed to work closely to ensure that the UN Conference on Small arms would bring about “effective guidelines or legally binding instruments as well as a Programme of Action encompassing all areas of international cooperation in small arms”.<sup>49</sup>

A few weeks prior to the beginning of the UN Small Arms Conference, the European Commission with the support of the Swedish Presidency published a report called *Small Arms and Light Weapons- The response of the European Union*.<sup>50</sup> The report stated the EU’s objectives for the UN Small Arms Conference and was produced with the plan to distribute it during the meeting in New York.

- *Level III*

Several EU Member States are important exporters of small arms and light weapons. In 1995, when the UN Secretary-General appealed for the address of the small arms issue, the EU accounted for 33% of total arms export.<sup>51</sup> During the 1990s, the debate on the trade of small arms materialized in various EU Member States. This debate was fuelled by various elements including studies showing that large quantities of arms were smuggled through the EU and brokered by EU companies and individuals. According to a study undertaken by the NGO Saferworld in 1998, Belgium, France and the United Kingdom were the EU counties most implicated in this illicit trade in the region of Sub-Saharan Africa.<sup>52</sup> The study revealed

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<sup>47</sup> Small Arms Survey, *op.cit.*, p.214.

<sup>48</sup> See Declaration by the European Union and the United States on the Responsibility of States and on Transparency Regarding Arms Exports, EU-US Summit. Conclusions, Washington DC, 18/12/2000.

<sup>49</sup> EU and Canada establish a joint Working Group on Small Arms to Tackle the Spread and Destabilising Accumulation of Small Arms and Light Weapons, EU-Canada Summit, Ottawa, 16/12/2000.

<sup>50</sup> European Commission *Small Arms and Light Weapons- The response of the European Union*, Luxembourg, Office for Official Publications of the European Communities, 2001.

<sup>51</sup> Eavis and Benson, *op.cit.*, p.89.

<sup>52</sup> See Saferworld, *Undermining Development: The European Trade with the Horn of Africa and Cenral Africa*, London, Saferworld, 1998.

that several Belgian companies and individuals were brokering illicit deals and that Belgian seaports and airports were used as transit points for the illicit trade. It also argued that arms manufactured in France and the United Kingdom were used in Sudan and French manufactured arms also found their way to Rwanda and Zaire. In addition to this increasing awareness of the negative effects of the illicit trade of SALW, domestic controls also increased in several EU countries during this period.

In the United Kingdom, following the killing of children and a teacher in Dunblane, Scotland by a lone gunman in March 1996, the British government considered the adoption of the ban of private ownership of handguns. In February 1997, the Conservative government passed a law banning private possession of handguns greater than .22 calibre. A few months later, the newly elected Labour government went even further and a comprehensive ban of handguns was passed by both the House of Commons and the House of Lords in November 1997.<sup>53</sup>

Additionally, as early as 1994, a number of NGOs based in the United Kingdom, including Saferworld, British American Security Information Council (BASIC) and the World Development Movement began to develop a Code of Conduct on arms trade based on the eight common criteria agreed by EU Member States in 1991 and 1992. Four years later, during its EU presidency, the UK proposed a similar Code of Conduct that would ultimately be adopted in the summer of 1998. A few months earlier, in February 1998, the Labour government organized a meeting with customs and intelligence officers to discuss approaches in the fight against the illicit trade of SALW and to examine areas wherein potential cooperation, regional and international, would be achievable. In May 1998, the British government also helped organize a conference in South Africa to discuss ways to implement the new EU Programme on SALW in the southern area of Africa.<sup>54</sup>

Belgium and the Netherlands, two Member States that held the EU presidency and the Presidency of the Security Council during the negotiations prior to the UN Conference on Small Arms also introduced national measures to combat the illicit trade of SALW. In 1997,

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<sup>53</sup> N. J. Goldring, "Domestic Laws and International Control", in J. Boutwell and M.T. Klare (eds.), *Light Weapons and Civil Conflict. Controlling the Tools of Violence*, Lanham, Rowman & Littlefield Publishers Inc., 1999, p.102-103.

<sup>54</sup> Eavis and Benson, *op.cit.*, p.93 and p.97.



an interministerial coordinating committee to combat illegal transfers of small arms was created in Belgium. This committee was to provide a framework for coordination between the government ministries (including the Foreign and Defence ministries) and also facilitate the exchange of information. From 2001, Belgium annually destroyed an average 12,000 to 13,000 of small arms that were 95% illicitly owned and had been seized during police operations. In 2002, Belgium was also the first EU country to incorporate the EU Code of Conduct on Arms Exports into domestic law<sup>55</sup>. In the Netherlands, the establishment of similar type of committee as the Belgian initiative was also considered. The Dutch government also began to destroy their surplus weapons.<sup>56</sup>

During the same period, France adopted stronger transparency measures towards arms export. Control over arms exports, including SALW exports came to the forefront of French domestic politics with the “Quiles” Commission established in 1998 to investigate the role of France in Rwanda between 1990 and 1994. The Commission was organized due to the pressure of French civil society, including several NGOs, members of the media and the academic community. The Commission strongly criticised the lack of transparency regarding French arms exports including SALW exports.<sup>57</sup> Following the publication of the Commission’s report, the French government adopted several measures to enhance the transparency of arms exports. In 2002, the French government also adopted stricter regulations that require brokers operating in France to be registered and keep records of their activities. The French government’s priority to strengthen control of arms exports and brokering was strongly voiced at the EU level. In addition, in the few months prior to the UN Small Arms Conference, France worked in partnership with Switzerland to develop of global instruments for marking and tracing.

Germany has been described as the most transparent SALW exporter in the European Union.<sup>58</sup> SALW exports remain a sensitive issue in German domestic politics. Germany has

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<sup>55</sup> Biting the Bullet and IANSA, *Reviewing Action on Small Arms 2006- Assessing the First Five Years of the UN Programme of Action*. London, Biting the Bullet and IANSA, 2006, p.105.

<sup>56</sup> *Ibid.*, p.97. and K. Krause “Multilateral Diplomacy, Norm Building, and UN Conferences: The Case of Small Arms and Light Weapons”, *Global Governance*, vol.8, no.2 , 2002. p.255.

<sup>57</sup> See Krause, *op.cit.*, p.255, and M. McNulty “French arms, war and genocide in Rwanda”, *Crime, Law and Social Change*, vol.33. 2000, pp.105-120.

<sup>58</sup> Small Arm Survey, *Small Arms Survey 2006 – Unfinished Business*, Oxford, Oxford University Press, 2006.

often been regarded as a front runner in applying strong control over arms exports. This can be explained by the Germany's "constitutional and political-cultural legacy as a defeated aggressor in the Second World War" that meant that "the reconstruction of an arms industry, let alone an export-based industry, was viewed with great apprehension both domestically and amongst its neighbours".<sup>59</sup> Germany early on encouraged other EU Member States and the EU to adopt stronger transparency measures on arms exports.

#### **5.4 Negotiations from 2001 to 2006 and the UN Small Arms Review Conference 2006**

After several years of preparation and two weeks of challenging negotiations, the 2001 UN Small Arms Conference had produced a politically binding document that suggested approaches to reducing the illicit trade of SALW. Several international actors including the EU welcomed the adoption of the *Programme of Action*, but also insisted that stronger commitments and efforts were needed from the international community to truly stop the proliferation of SALW. Soon after the conference, it became clear that a Review Conference of the PoA would constitute a crucial opportunity for the UN member states to strengthen their commitment on SALW. Negotiations on the preparation of a Review Conference were difficult. Until the commencement of the Review Conference, the EU multiplied its efforts to convince other states to adopt strong international commitments. The Review Conference opened in New York on 26 June 2006. Spirits were high at the beginning of the Conference as many international actors believed that the adoption of a strong outcome document could be beneficial to the fight against the illicit trade of SALW. However, the Review Conference ended on the 7 July without the adoption of a final document.

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<sup>59</sup> K. Holm, "Europeanising Export Controls: The Impact of the European Union Code of Conduct on Arms Exports in Belgium, Germany and Italy", *European Security*, vol.15, no.2, June 2006, p.226.

- *Level I*

### *Part I: Negotiations from August 2001 to June 2006*

In August 2001, after the end of the UN Small Arms Conference, the UN Security Council held a second open debate on SALW. During the debate, Kofi Annan as well as 36 other states openly deplored the lack of any legally binding international instrument to control the illicit SALW trade. At the debate, Belgium spoke on behalf of the EU and recalled two of the EU's priorities, arms brokering and marking and tracing. Belgium argued that UN Small Arms conference had opened the way to start negotiations on these issues. The EU, Canada, and Norway gave support to international export criteria that would be based on the respect for human rights and international humanitarian law.<sup>60</sup>

In the course of its 56<sup>th</sup> session, the First Committee of the UNGA also addressed the SALW issue. The Committee asked the Secretary-General to organize a Review Conference in 2006 at the latest.<sup>61</sup> The resolution supported cooperation with civil society, the destruction of SALW surpluses, international cooperation on brokering as well as the establishment of a group of experts to evaluate the feasibility of an international marking instrument. More importantly, this resolution also confirmed the establishment of meetings to consider the implementation of the PoA. Section IV of the *Programme of Action* had outlined measures to the 2001 Small Arms Conference. The most important measure was the organization of Biennial Meeting of States (BMS) that would consider implementation, at the national, regional and international level, of the *Programme*.<sup>62</sup>

The First Biennial Meeting of States was held from 7 to 11 July 2003 and was chaired by the Japanese Ambassador Kuniko Inoguchi. Fewer delegations attended the First BMS than the 2001 Small Arms Conference. The 138 delegations that did participate included not only

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<sup>60</sup> L., Bondi "Disillusioned NGOs Blame the United Nations for a Weak Agreement", *SAIS Review*, vol. 22, no.1, Spring 2001, p.232.

<sup>61</sup> See UNGA Resolution A/RES/56/24

<sup>62</sup> See Section IV, para. 1b, Programme of Action to Prevent and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its aspects. *Report of the United Nations Conference on the Illicit*

enthusiastic players such as the EU, but also more reluctant actors such as the United States, India, China and Russia. This First BMS was based mostly on thematic discussions on issues regarding the implementation of the *Programme of Action*. The first few days of the Conference were focused on the national implementation of the POA. Several international actors used the opportunity to present their expectations of the meeting. For some countries and organizations including the EU, the meeting represented a chance to review and improve the PoA. In its statement, Italy, on behalf of the EU, affirmed that EU believed that the meeting should “adopt an ambitious approach” and that the discussions should also give consideration “to starting to work on unresolved and newly relevant issues”<sup>63</sup>. The Italian Ambassador also emphasized that the EU believed the thematic discussions should focus on “crucial elements such as export controls, marking and tracing, brokering activities and the relationships between small arms and development”.<sup>64</sup> The statement reflected the consensus reached within the EU on many on these issues that had been formalized with the adoption of the Joint Action in June 2002 and of a common position on arms brokering in June 2003 (see Level II). The European Union also showed its interest in presenting its candidature for the chairmanship of the 2005 BMS meeting.

On July 10<sup>th</sup>, thematic discussions were regrouped under six “clusters”: 1) weapons collection and destruction, stockpile management and disarmament; 2) capacity-building, resource mobilisation and institution building; 3) Marking and tracing; 4) Linkages (terrorism, organized crime, trafficking in drugs and precious minerals); 5) Import/export and illicit brokering; 6) Human development, public awareness and culture of peace, and children, women and elderly. The EU made a formal written contribution to all the thematic discussion “clusters”. The EU also made a specific contribution on the issues of marking and tracing and strongly encouraged the adoption of a legally binding multilateral instrument on SALW brokering.

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*Trade in Small Arms and Light Weapons in All its Aspects*, New York, 9-20 July 2001.  
A/CONF.192/15

<sup>63</sup> Italian Presidency of the Council of the European Union, *Statement by H.E. Ambassador Carlo Trezza*, Permanent Representative of Italy to the Conference on Disarmament in Geneva on behalf of the European Union, Biennial Meeting of States to Consider the Implementation of the Programme of Action, New York, 07/07/2003.

<sup>64</sup> *Ibid.*

By the end of the conference on July 11, Ambassador Inoguchi had compiled a summary of the meetings. The Ambassador had circulated a first draft of the summary on July 10, the day of the thematic discussions. The draft attracted criticism: some states deplored the fact that the summary did not reflect the positions initiated in the thematic discussion. Several states also expressed concerns the summary discussed issues beyond the mandate of the Biennial Meeting of States.<sup>65</sup> At the closing of the Conference, the summary was not integrated in the main text of the report, but only included as an appendix.<sup>66</sup> The summary also clarified that it was the sole responsibility of the Chairperson and that it did not cover all the issues discussed.

Although the First Biennial Meeting of States had not produced any formal agreement or improvement of the PoA, it did reflect a certain commitment on the part of the international community to address the issue of SALW.<sup>67</sup> Parts of the discussions held at the meeting were fruitful: a few months after the meeting, the UNGA adopted a resolution that established an open-ended working group to negotiate an international instrument for marking and tracing SALW.<sup>68</sup> For the EU, the First BMS represented another occasion to reiterate its commitment to curtail the spread of SALW. The EU used the meeting to advocate issues that the EU Member States had already achieved consensus at the EU level. The EU also attempted to convince other states to adhere to international standards on SALW.

If the First Biennial Meeting of States had reestablished the SALW issue on the international agenda, it would not, however, lead to the adoption of legally binding standards that the EU desired. A month before the beginning of the Second Biennial Meeting of States, and after six weeks of difficult negotiations, the Open-ended Working Group on Tracing Illicit Small Arms and Light Weapons produced the first instrument negotiated within the PoA: the International Tracing Instrument. This new instrument, although welcomed by the

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<sup>65</sup> See P. Batchelor, "The First Biennial Meeting of States on Small Arms: Building Momentum for Global Action", *Disarmament Diplomacy*, no.72, August-September 2003,

<sup>66</sup> See Document A/CONF.192/BMS/2003/1

<sup>67</sup> On the significance of the First BMS see P. Batchelor, *op.cit.*

<sup>68</sup> See UNGA Resolution A/RES/58/241

international community, was a politically and not legally binding agreement.<sup>69</sup> This did not meet the expectations of many international actors on the SALW including the EU.

The Second Biennial Meeting of States was held from 11 to 15 July 2001 in New York. The Finnish Ambassador Pasi Patokallio was nominated Chair of the meeting. The Ambassador chose to retain the same thematic clusters defined at the first BMS. Prior to the meeting, he strongly encouraged states to debate the strength and weaknesses of the PoA in an attempt to generate useful debate on the upcoming Review Conference of the *Programme of Action*.<sup>70</sup> The Finnish Ambassador was supported in his request by the British Ambassador, John Freeman, who spoke on behalf of the EU at the beginning of the meeting. The British Ambassador stated that the EU believed that the meeting should be “ambitious and forward looking” and hoped that the discussions would help states to consider areas of further work as so to improve the usefulness of the 2006 Review Conference.<sup>71</sup> Yet again, the EU proposed written contributions to all the six thematic “clusters,” reiterating its stance on the issues of import/exports controls and brokering.

Considering the controversial character of the summary produced during the First BMS, it was agreed that no such document would be included in the final report of the Second BMS. Nevertheless by the end of the Conference, states began to discuss the central issues that would be addressed at the 2006 Review Conference and would instigate informal consultations organized by the Committee in charge of preparing the Review Conference.

Considering the evident reluctance of certain major players to discuss the review PoA at the two BSM, it became clear that negotiations at the Preparatory Committee of the Review Conference in January 2006 would be challenging. The Preparatory Committee (PrepCom) met in New York from 9 to 20 January 2006. Prior to the meeting, the Chair, Ambassador Rowe from Sierra Leone held several informal consultations in New York and Geneva. The

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<sup>69</sup> On the negotiations surrounding the International Tracing Instrument, see P. Batchelor and G. McDonald, “Too close for comfort: an analysis of the UN tracing negotiations”, *Disarmament Forum*, no.1, 2006, pp.39-47.

<sup>70</sup> Biting the Bullet and IANSA, *op.cit.*, p.29.

<sup>71</sup> See EU Presidency Statement, UN Programme of Action on Small Arms and Light Weapons, Biennial Meeting of States to consider the implementation of the UN Programme of Action on Small

Ambassador decided to continue with the format of interactive thematic debate and defined six “clusters” that would include a number of issues derived from the PoA and the discussions at the First and Second BMS. However, the list of issues presented was not exhaustive. The Ambassador emphasized that this would give delegations the opportunity to raise other issues that in their view were relevant. The six clusters covered the following issues: 1) Human/humanitarian, socio-economic and other dimensions; 2) Norms, regulations and administrative procedures; 3) Excessive accumulation, misuse and uncontrolled spread; 4) International cooperation and assistance; 5) Communication; and 6) Follow-up and reporting mechanisms.

At the PrepCom, the EU presented its Strategy to combat illicit accumulation and trafficking of SALW and their ammunition that had been adopted by the European Council in December 2005 (see Level II). The Strategy was in direct response to the PoA. Its main aim was to facilitate the implementation of the PoA at the EU level. The Strategy included an Action Plan with specific measures defined at the international, regional levels and within the EU. In the framework of the PoA, the Strategy supported the adoption of a legally binding international agreement on the tracing and marking of SALW, the creation of a group of experts on brokering, the strengthening of exports control and the inclusion of minimum common international criteria and guidelines for controls on SALW transfers in the PoA<sup>72</sup>. This Strategy restated the EU’s commitment to the UN process initiated to address SALW. Nevertheless, the EU was well aware that the Review Conference would not initiate a renegotiation of the PoA and with the US and the League of Arab States, insisted in its statement that the “goal of Review Conference [was] not to renegotiate or re-open the existing Programme of Action,” but rather to complement or enhance the PoA and its implementation<sup>73</sup>.

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Arms and Light Weapons, Statement by H.E. Ambassador John Freeman, Head of UK Delegation to the Biennial Meeting of States, on behalf of the European Union (New York), 11/07/2005.

<sup>72</sup> See European Council, *EU Strategy to combat illicit accumulation and the trafficking of SALW and their ammunition*, 15-16 December 2005. Preparatory Committee for the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 January 2006, 17 January 2006, A/CONF.192/2006/PC/CR.14.

<sup>73</sup> See Statement by Dorethea Auer, Austria, on behalf of the European Union, General Debate, Preparatory Committee for the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9 January 2006.

During the PrepCom negotiations, the EU made a formal written contribution to all six clusters and placed particular emphasis on the need for brokering controls, transfer control and transfer to non-state actors, and a focus on ammunition. Although the EU presented a common strategy at the Conference, several EU Member States also had their own priorities that they regarded as vital. These priorities often reflected issues that had been addressed and had become main interests at the domestic levels. France and Germany presented draft elements on ammunition for a Final Document of the UN SALW Programme of Action Review Conference 2006 that emphasized the need to combat the illicit trade of ammunition.<sup>74</sup> On the other hand, the Netherlands and the UK presented a working paper “addressing the negative humanitarian and development impact of the illicit manufacture, transfer and circulation of SALW and their excessive accumulation” and recommended that the link between SALW and development be clearly spelled out in the final document of the Conference.<sup>75</sup>

There was a general consensus at the PrepCom that the Review Conference would not renegotiate the PoA. The Review Conference would rather produce an outcome document to supplement and reinforce the PoA. Despite this general agreement, negotiations remained difficult at the PrepCom with a number of states including the United States, Iran, Israel and Egypt refusing to compromise on certain issues. Although the United States stated that the PoA was a useful tool, it also said that the positions that it clearly defined during the negotiations of the PoA remained unchanged. The United States, therefore, was not willing to negotiate on issues such as domestic regulations, ammunition or a ban on transfer to non-state actors.<sup>76</sup> The unwillingness of some major players to discuss several of the relevant issues became a major obstacle for a successful conclusion to the PrepCom.

Negotiations ended on the 20<sup>th</sup> January without agreement on a draft final to forward to the Review Conference. The Chairman produced a conference room paper, but was unable to gain support for its incorporation into the final document<sup>77</sup>; only texts of an organizational

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<sup>74</sup> See UN Document A/CONF.192/2006/PC/CRP.12

<sup>75</sup> See UN Document A/CONF.192/2006/PC/ WP.2

<sup>76</sup> See *United States Opening Statement to the Preparatory Committee for the First Review Conference of the United Nations Program of Action for Small Arms and Light Weapons*, New York, January 11 2006.

<sup>77</sup> See UN Document A/CONF.192/2006/PC/CRP.17



nature were adopted. Ambassador Rowe deplored the fact that some delegations were not aware of the “gravity of the problem or the urgency of the action that was required to defeat it” and warned the states that they still had “a long, long way to go” in the fight against the spread of illicit SALW.<sup>78</sup>

## *Part II- The UN Small Arms Review Conference 2006 (26 June- 7 July 2006)*

The fact that the Preparatory Committee did not achieve agreement on a document to forward to the Review Conference meant that the work of the President for the Review Conference would be even more crucial. The President of the Review Conference, Ambassador Prasad Kariyawasam of Sri Lanka began consultations with various delegations immediately following the PrepCom. In February 2006, Kariyawasam circulated a first non-paper for informal consultation purposes. Another version of the non-paper was produced in May 2006. This latest version still included highly contentious issues, which suggested that negotiations at the Review Conference would be extremely challenging.

The 2006 United Nations Conference to Review the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light Weapons in all its Aspects opened in New York on 26 June. In his opening statement to the Conference, Ambassador Kariyawasam called upon the Member States to show “flexibility and political will to take this conference towards a successful conclusion.”<sup>79</sup> However, even before the Review Conference, there was controversy surrounding the meeting – particularly in the United States. The powerful American group National Rifle Association (NRA) had launched a campaign of mass mailing to the UN to denounce the United Nations attempt to deny the rights of Americans to gun ownership<sup>80</sup>. This campaign prompted the Secretary-General to reaffirm at the start of the Conference, that the Review Conference was not negotiating a “global gun ban” or trying to “deny law-abiding citizens their right to bear

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<sup>78</sup> See UN Document, DC/3011

<sup>79</sup> *Opening Statement By Ambassador Prasad Kariyawasam*, UN Conference to Review the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light Weapons in all its Aspects, 26/06/2006.

<sup>80</sup> See W. Hoge, “With Caveats, US Backs Session at the UN on Curtailing Illegal Arms”, *The New York Times*, 28/06/2006.

arms in accordance with their national law.”<sup>81</sup> Even before negotiations began at the Review Conference, it was clear that the negotiations on certain aspects of the *Programme of Action*, including on several EU’s priorities, would be difficult.

The Review Conference followed the same type of programme of work as the 2001 UN Small Arms Conference. The first week was reserved for high-level statements. Austria, on behalf of the EU, was the first state to make its statement. Hans Winkler, the Austrian State Secretary for Foreign Affairs, acknowledged that “[a]ddressing this important forum as the first speaker implies some responsibility for the European Union” and that “the fight against the illicit trade in SALW has become even more urgent in the context of intensified international action against terrorism”.<sup>82</sup> The EU had twelve different priorities for the Review Conference.<sup>83</sup> Austria summarized the EU’s priorities in its statement: “the European Union is convinced that the United Nations’ efforts to control SALW have to be intensified in particular in those crucial areas where significant obstacles to full implementation persist. We believe these are transfer controls, marking and tracing, brokering regulations, ammunition and the integration of small arms measures into development assistance. In addition, the question of how to structure the follow-up to the Review Conference is central to the EU in ensuring progress in the further implementation of the Programme of Action.”<sup>84</sup> Several EU Member States including UK, Germany and the Netherlands also made statements supporting the EU’s priorities.

If at the beginning of the Review Conference, the EU promoted the adoption of strong international commitments, other states made it clear that they were not willing to negotiate on certain issues of the *Programme of Action*. The American position remained unchanged from previous meetings. In his statement, Robert Joseph, the Under-Secretary of State for Arms Control and International Security, made the US position very clear: although the United States did believe strongly in the agreed Program of Action, it would not accept

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<sup>81</sup> UN Secretary-General, *Address to the United Nations Review Conference*, 26/06/2006.

<sup>82</sup> *Statement on the Behalf of the EU*, UN Conference to Review the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light Weapons in all its Aspects, New York, 26/06/2006

<sup>83</sup> Interview with an official of an EU Member State’ Mission to the UN, New York, 20/06/2006.

<sup>84</sup> *Statement on the Behalf of the EU*, UN Conference to Review the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light Weapons in all its Aspects, New York, 26/06/2006

certain actions. The United States would not agree to any provisions restricting civilian possession, use or legal trade of firearms inconsistent with US laws and practices. The US position also remained unchanged on two other issues: 1) ammunition, which were perceived as beyond the mandate of the Review Conference; and 2) the transfer to non-states actors.<sup>85</sup> A number of other states including India and China also expressed their reservations to negotiate on a number of issues of the PoA.

On the second day of the Conference, Ambassador Kariyawasam produced a non-paper that was submitted to the states. The non-paper became a working paper during an informal meeting on 29 June and the President asked states to forward their proposals and amendments to the working paper. On 30<sup>th</sup> of June, a side event entitled *EU Action in the Area of SALW* was organized to present an overview of the EU's activities. Representatives from the Presidency, the Council Secretariat/Office of the High Representative for CFSP's Personal Representative on non-proliferation and the European Commission presented the EU SALW policy and the instruments put in place to achieve the objectives set out in the *EU Strategy*. With this side-event the EU wished to reaffirm its priorities for the Review Conference.

On July 3<sup>rd</sup>, the President circulated another non-paper for consultation that had integrated some state proposals. Furthermore, the Chair appointed three facilitators (Colombian Ambassador, Swiss Ambassador and Japanese Ambassador) to address specific contentious issues including: development assistance and small arms, and follow-up mechanisms. Formal negotiations on the draft final document were only initiated on the 5<sup>th</sup> of July as the High-level segment of the Conference extended beyond the scheduled time. However, a number of informal meetings were held between the 30<sup>th</sup> June and 7 July to negotiate draft outcome document. Because the conference was based on consensus and had time constraints, many states rapidly realized that most of their efforts should be concentrated on convincing less enthusiastic states to support the final document. Negotiations were complicated by the fact that the US delegation sent various versions of the draft outcome document to Washington. This considerably slowed the negotiations.

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<sup>85</sup> Statement by Robert G. Joseph, Undersecretary of State for Arms Control and International Security, at the United Nations Conference to Review Progress Made in the Implementation of the

During the negotiations, the EU Presidency, Austria in the first week and Finland in the second week held several coordination meetings to achieve an EU common position on the key issues of the PoA. The Finnish delegations also organized two meetings with European NGOs. Despite these coordination efforts, it soon became apparent that several EU Member States were advocating their own priorities. France and Germany wanted the document to include a reference to ammunition. Because the United States insisted that ammunition should not be included in the final document, France and Germany focused their efforts at the Review Conference on reaching a compromise with the Americans on this specific issue.

The UK was also an extremely active actor during the Review Conference. Supporting the Transfer Control Initiative (TCI) and the Arms Trade Treaty, the UK was perceived capable of leadership at the Review Conference. The UK made several proposals on transfer controls and also attempted to persuade the American delegation to support the inclusion of several issues such as transfer controls. However, the UK's initiatives were criticized by other EU Member States. First, some states felt that the UK was too close to the United States to adopt strict positions on the more contentious issue. Second, the UK made several proposals and suggestions to the President of the Conference, especially on transfer controls, without consulting its EU partners. This was especially apparent in the last hours of the Conference when the UK suggested a text on transfer control without consulting its EU partners.

The UK's initiative on another issue was also faced strong criticisms. The Netherlands and the UK advocated for the link between fight against the spread of illicit SALW and sustainable development to be recognized. This time, the opposition came from a number of states from the Non-Aligned Movement including India and Indonesia and the Caribbean States that raised concerns about the idea of conditionality on development aid and the possibility of resources from the donor countries being diverted from development projects to SALW projects. The UK and the EU failed to convince key partners on the link between development assistance and the adoption of international measures on SALW. Furthermore, other states also criticized the EU for focusing on the coordination of the EU position rather

than forming potential allies, including the African states. This was seen as particularly problematic as Africa is the most affected region by the scourge of SALW.

On 7<sup>th</sup> July, in the final hours of the Conference, confusion surrounded the negotiations. With the deadline of 6pm rapidly approaching, it became clear that a consensus could not be reached on an outcome document. Some delegations hoped that the Review Conference would be extended for a few hours to find a similar agreement as the one reached at 2001 Small Arms Conference. However, around 5.30pm, Ambassador Kariyawasam began the procedures to close the conference and adopted a procedural document; the final outcome document stated that the Conference was not able to agree to conclude a final document.<sup>86</sup> EU Member States were perceived as having played a part in the swift conclusion of the Review Conference. Some EU Member States, such as France, urged the President of the Review Conference to begin the closing procedures as it was clear that no consensus could be found. The United Kingdom also pushed the President of the Conference to adopt a consensual document with only elements that had been agreed to by most countries. But this created further confusion as a number of agreements had been made in informal meetings rather than in the formal process of negotiations.<sup>87</sup> With the mounting divergent pressure and the visible lack of consensus, the President decided to bring the Conference to a close.

Many national delegations and NGOs representatives were extremely disappointed by the result of the Conference; some states even described the Conference as a failure. Ambassador Kariyawasam in his closing remarks said that a consensus on the final document had been “within grasp.”<sup>88</sup> He believed that despite the lack of consensus on a final document, the Review Conference had been successful in attracting the interest of the international community. In its final statement at the Conference, Finland on behalf of the EU, stated that “the European Union, committed to effective multilateralism, [was] deeply disappointed by the lack of results of the Conference”. It also said that the “conference has been a missed opportunity to make a real difference in our common fight against the scourge of illicit small arms and light weapons. The European Union regrets that some delegations have not been willing to make significant progress” and that it was “regrettable that the

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<sup>86</sup> See UN Document A/CONF.192/2006/RC/9

<sup>87</sup> Interview with IANSA delegate, New York, 7 July 2006

<sup>88</sup> See UNGA Document DC/3037

momentum created by the civil society was not matched by the flexibility by some states”. Despite the lack of results of the Conference, the EU remained committed to the implementation of the PoA. Finally Finland emphasized that “the EU will remain in the forefront of our common fight and practical work to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects.”<sup>89</sup>

- *Level II*

Following the UN Small Arms Conference, the EU remained extremely active on SALW. In July 2002, the EU adopted a Joint Action<sup>90</sup> which replaced the 1998 Joint Action on the EU’s contribution to combating the destabilizing accumulation and spread of SALW. Since the UN Small Arms Conference, Germany and France had strongly campaigned among their EU partners to address the issue of SALW ammunition. The new version of the Joint Action reflected the German and French position as it acknowledged the role of ammunition in conflicts affected by the negative consequences of SALW. With the adoption of this Joint Action, EU Member States reaffirmed their commitment to combat the proliferation of small arms and light weapons. Furthermore, in June 2003, under the Greek presidency, the EU adopted a Common Position on the controls of arms brokering, which included some provisions on small arms and light weapons. This Common Position established a clear legal framework on arms brokering and requested from the EU Member States to adopt of necessary national measures to control arms brokering activities on their territory<sup>91</sup>.

During its EU Presidency, the UK took several initiatives to address the SALW issue at the EU level. First, the General Affairs Council in October 2005 supported the idea of an international treaty to establish common standards for the global trade in conventional arms. It also highlighted that the United Nations was the only forum that could deliver this treaty

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<sup>89</sup> *Statement by H.E. Ambassador Kari Kahiluoto, Permanent Representative of Finland to the Conference on Disarmament, on behalf of the EU, Speech, General Affairs and External Relations, 10/07/2006.*

<sup>90</sup> Council Joint Action of 12 July on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, 2002/589/CFSP, Official Journal L 191, 19/07/2002, pp.1-4.

<sup>91</sup> See Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering. *Official Journal of the European Union*, L 156/79, 25/6/2003.

and called for the start of a formal process at the UN at the earliest opportunity.<sup>92</sup> The idea of an international Arms Trade Treaty was first initiated by a group of Nobel Peace Laureates in 1995 who sought to limit the spread and misuse of conventional arms including small arms and light weapons. The ATT would create legally binding controls and international standards on arms trade. In 2003, the global Control Arms Campaign was launched by three UK-based NGOs, Oxfam, Amnesty International and International Action Network on Small Arms (IANSA).<sup>93</sup> Shortly thereafter, the UK with the Control Arms campaign and the British NGO Saferworld organized a meeting in Brussels to discuss the ATT with representatives from EU Member States, the European Commission and the European Parliament as well as various European NGOs.<sup>94</sup> The ATT rapidly gained support among the EU Member States; in fact, the ATT would introduce international standards similar to the EU Code of Conduct and therefore ensure that EU arms manufacturers would not be disadvantaged.<sup>95</sup>

Second, with the PrepCom approaching, the UK realized the need for a strong united EU position on SALW. It was clear from the two previous Biennial Meetings of States that negotiations would be difficult at the PrepCom as certain states were reluctant to change their views on a number of issues. The EU Strategy to combat illicit Accumulation and Trafficking of SALW and their Ammunition<sup>96</sup> was therefore adopted by the European Council on 15-16 December 2005, just a few weeks before the beginning of the PrepCom. The Strategy, which is linked to the 2003 European Security Strategy, is presented as a guidance tool for all EU activities in the field of small arms. The Strategy outlines measures to be taken at the international level, but also within the EU. At the EU level, the Strategy's Action Plan calls for an effective response to the accumulation of small arms and the problems posed by the availability of existing stocks, but also for the establishment and development of the necessary structures within the EU to deal with the issue. This includes the strengthening of the Council Secretariat's capabilities to ensure a coherent application of

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<sup>92</sup> Council of European Union, Press Release, 2678<sup>th</sup> Council Meeting – General Affairs and External Affairs, Luxembourg, 3 October 2005, 12514/05.

<sup>93</sup> See [www.controlarms.org](http://www.controlarms.org)

<sup>94</sup> See European Parliament, Directorate-General for External Policies, *The Role of the European Union in tackling Small Arms and Light Weapons (SALW) proliferation*, EXPO/B/POLDEP/NOTE2005, 01/12/05.

<sup>95</sup> *Ibid.*, p.7

<sup>96</sup> European Council, *EU Strategy to combat illicit accumulation and the trafficking of SALW and their ammunition*, 15-16 December 2005.

the strategy by working in close cooperation with SALW experts from the Commission and Member States. The Strategy also promotes for greater horizontal coordination and exchange of information between the Council's experts groups both geographical and thematic (CODUN, COARM, etc). The Strategy also stresses the need to ensure consistency between the Council decisions in the CFSP framework and actions implemented by the Commission in the field of development aid. The EU's Strategy on SALW was adopted with the expectation that the EU would play a crucial role at the Review Conference. With major players, particularly the United States, insisting that they would not compromise on certain issues, the EU needed not only to be united at the Review Conference, but also to clearly define issues of vital concern for the EU.

The EU Strategy on Small Arms also acknowledged the role of another EU institution: the European Commission. After the 2001 Small Arms Conference, the Commission became increasingly active in this field. It created several small arms-related programs using different lines of budget and programs, such as the European Initiative for Democracy and Human Rights (EIDHR). The Commission also used the European Development Fund (EDF) to fund small arms related assistance in ACP (African, Caribbean and Pacific) countries and Overseas Countries and Territories (OCT). The European Commission supported a wide-ranging research project on "Strengthening European Action on Small Arms and Light Weapons and Explosive Remnants of War".<sup>97</sup> The study was carried out by the UN Institute for Disarmament Research (UNIDIR). The final report of the study covered small arms related activities funded under the different institutional branches. It also highlighted some of the areas where the Commission might play a greater role. Although the European Commission increased its activities on small arms, it never became a significant player in negotiations on small arms at the EU level. In fact, small arms and light weapons never became a "development" issue at the EU level. Thus, the role of the Commission remained quite limited in negotiations in the EU but also in negotiations at the international level.

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<sup>97</sup> See UNIDIR, *European Action on Small Arms and Light Weapons and Explosive Remnants of War. Final Report*. Geneva, UNIDIR, 2006.



- *Level III*

Following the UN conference on Small Arms, the UK increased its involvement on SALW issue and between 2000 and 2005 became one of the most vocal international actors on SALW. As early as July 2000, the British Government established the Global Conflict Prevention Pool that was managed jointly the Foreign and Commonwealth Office, the Department for International Development and the Ministry of Defence. The British government decided to include a strategy on SALW in this resource pool. The UK SALW strategy aims to coordinate existing programmes managed by the three departments under a single set of objectives and resources. The Department for International Development became the administrator of the SALW strategy with the help of a small steering group of officials from both the Foreign Office and the Ministry of Defence. The aim of the Strategy is to control and reduce the supply availability and demand for SALW by producing policy-focused research, by raising international and regional awareness on the need for stronger controls, by implementing concrete measures such as arms collection and the management and destruction of surpluses, and by integrating SALW controls into a wider perspective on conflict prevention and development assistance. The UK SALW strategy also included support for partnership with UN agencies and civil society.

In addition to the SALW strategy, the British government in 2002 adopted the Export Control Act that introduced a strong revision of its export control legislation<sup>98</sup>. The UK also remained extremely active in the area of transfer controls. In January 2003, a Conference on Strengthening Export Controls was held at Lancaster House. The Conference, which involved representatives of 49 countries and of various NGOs, considered measures to implement controls on arms transfer. A few months later, during the First BSM, UK organized side meetings to discuss the strengthening of export controls. In July 2003, the UK with support from France, Germany, the Netherlands and Sweden, launched the Transfer Control Initiative (TCI) that focused on strengthening controls over the export, import and transit of small arms in countries.<sup>99</sup> Reinforcing transfer controls of SALW became a top priority of the UK government.

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<sup>98</sup> Biting the Bullet and IANSA, *op.cit.*, p.105.

<sup>99</sup> See Foreign and Commonwealth Office, Department of Trade and Industry, Department for International Development and Ministry of Defence, *United Kingdom Strategic Export Control-Annual Report 2003*, June 2004, Cm 6173.

Germany was another country that reiterated its commitment to curbing the negative effects of SALW and began to actively destroy their surplus and illicitly owned SALW. In Germany, between 1990 and 2004, the Federal Armed forces destroyed more than 1.7 million surplus SALW.<sup>100</sup> The question of SALW ammunition also became a priority for the German government, especially during the 2006 Review Conference. The massive amount of ammunition that had been accumulated on German soil had become particularly problematic for the German Government. Indeed, with the end of the Cold War, more than one million SALW, ammunition and explosives were decommissioned in Germany. The German government advocated that the issues of ammunition and of surplus be addressed by the European Union and the international community.

Between the 2001 Small Arms Conference and the 2006 Review Conference, national NGOs and IANSA developed strong partnership with several EU governments. For example, the UK, in partnership with IANSA campaigned for the adoption of the Arms Trade Treaty (ATT). Within the UK government, the ATT had a prominent supporter, Jack Straw, Foreign Minister at the time. In March 2004, Straw announced that the UK supported the idea of an international treaty on the arms trade.<sup>101</sup> The Arms Trade Treaty was also supported by the British Defence Industry including the British Defence Manufacturers Association (DMA) that regroups 550 defence companies, and key trade unions.<sup>102</sup> During its EU presidency, the UK convinced its other EU partners of the need to support this initiative; the Control Arms campaign gained momentum when the EU Member States supported the ATT during the European Council in October 2005. Another EU State, Austria, which held the EU Presidency in the first-half of 2006, was intensely lobbied by a national NGO campaign to implement the *Programme of Action*. The pressures on the government resulted in the adoption in May 2005 of a new Foreign Trade Act that addressed transfer control.<sup>103</sup>

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<sup>100</sup> Biting the Bullet and IANSA, *op.cit.*, p.105.

<sup>101</sup> European Parliament, Directorate-General for External Policies, *The role of the European Union...*, p.6-7.

<sup>102</sup> See Control Arms. Parliamentary Briefing. 2006- a crucial year for controlling the global arms trade. [www.controlarms.org](http://www.controlarms.org), accessed 27/10/2006.

<sup>103</sup> *Ibid.*, p.105.

## 5.5 Conclusion

In contrast to the anti-personnel landmines case, the EU Member States showed immediate internal effectiveness in SALW negotiations. At the UN level, several EU Member States were actively involved in the negotiations. Some of these Member States, such as Finland and the UK, were directly involved in the organization of several international meetings. At each of the formal meetings, the EU Presidency not only made a statement on behalf of the EU, but also formally contributed to each of the “clusters” of the thematic discussions. Furthermore, during the preparatory meetings of both the 2001 UN Small Arms Conference and the 2006 Small Arms Review Conference, the EU circulated an EU document stating its priorities (the EU Plan of Action in 2001 and the EU Strategy on Small Arms in 2005).

However, during the 2006 Small Arms Review Conference, the EU’s internal effectiveness gradually dissolved. Negotiations on SALW did not address “one” issue as did discussions on the mine-ban treaty. To have a treaty banning the use, production, and transfer of SALW was unrealistic. Negotiations on SALW at the UN, therefore, focused on several issues that could curtail the spread of SALW and addressed multiple complex issues such as civil ownership, transfer controls and transfers to non-state actors, and development assistance. It was difficult for the EU to maintain a common position on the issue of SALW: EU Member States were apparently more interested in pursuing their own priorities rather than in reaching a strong EU position, which resulted in a situation where “in attempts to take stronger positions on a number of themes, several EU Member States spoke on behalf of their individual governments, rather than allowing the moderate joint EU statements to represent them.”<sup>104</sup> Yet, the “moderate” EU position attracted much more support at the Conference than the stricter positions of certain EU Member States.

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<sup>104</sup> C. Buchanan, *The UN Review Conference on small arms control: Two steps backwards?* Available at [www.hdcentre.org](http://www.hdcentre.org). accessed on 20/11/06

Lastly, the EU was not as vocal as it should have been in key moments during the negotiations. The EU entered the negotiations with several specific issues that it wanted to appear in the final document, but was willing to compromise. Throughout the negotiations, the EU, through the Austrian and the Finnish delegations, reaffirmed its commitment to reaching a consensus on the final document, even if it failed to meet their priorities. Indeed, during the negotiations, the EU seemed to be one of the most flexible actors around the negotiating table. Furthermore, a number of EU Member States were also frustrated by the lack of good will of certain countries to reach consensus and believed that another number of hours would not have made a significant difference.<sup>105</sup> Ultimately, the EU was unable to achieve its objectives and lacked external effectiveness.

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<sup>105</sup> Interview with an official from an EU Member State Mission to the UN, Geneva,, 22 April 2008

## Protecting Children in Armed Conflict: What Single Voice?

### 6.1 Introduction

In the 1990s, pictures of child soldiers in various conflicts around the world increasingly emerged in the media. The trend of using children as soldiers was facilitated by the uncontrolled spread and accessibility to small arms and light weapons since the end of the Cold War. Indeed, arms such as the AK-47, or “Kalashnikov”, are light enough to be carried and simple enough to be used by young children and can have deadly consequences.<sup>1</sup> Although Africa was (and remains) identified as the region with the highest number of child soldiers (children have participated in wars in Angola, Côte d’Ivoire, Liberia, Democratic Republic of Congo, Rwanda, Sierra Leone Somalia, Sudan and Uganda), children have also been used in other world regions such as Asia, the Middle East and Latin America. Afghanistan, India, Myanmar, Iraq, Guatemala, Colombia are also countries that have seen thousands of children involved in armed conflict.<sup>2</sup>

The issue of child soldiers started to attract the international community’s attention including the European Union. In December 2003, the European Union presented its EU Guidelines on Children in Armed Conflict.<sup>3</sup> These guidelines were developed in close collaboration with the UN Special Representative for Children and Armed conflict at the time, Olara Otunnu, the United Nations Children’s Fund (UNICEF) and a number of non-governmental organizations. They were adopted to highlight the problem of children in armed conflict, to emphasize EU actions in this area and to persuade non EU-countries and non-state actors to

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<sup>1</sup> Machel, *op. cit.*, p.7.

<sup>2</sup> For a complete lists of countries where children are used as soldiers see <http://www.child-soldiers.org>

<sup>3</sup> See Council of the European Union, *EU Guidelines on Children and Armed Conflict*, Document 15634/03, Brussels, 4 December 2003.

implement effectively international legislation in this area. With the adoption of the guidelines, the EU wished to project an image of an effective and unified actor, who worked closely and supported the United Nations. Yet, less than three years before, EU Member States had struggled to adopt a unified position at the UN regarding this particular issue. Indeed, from 1994 to 2000, EU Member States were involved in arduous negotiations on an optional protocol to the Convention of the Rights of the Child that addressed the involvement of children in armed conflict. Consensus on the optional protocol was only reached at the last minute, but divisions in the EU camp were clearly apparent throughout the negotiations. Ultimately, in May 2000, the UN General Assembly adopted the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict (OP-AC).

This chapter examines the internal and external effectiveness of the European Union in negotiations that occurred at the UN to develop the Optional Protocol to complete the Convention of the Rights of the Child of 1989. Negotiations on the Optional Protocol at the United Nations mainly took place within the Committee of the Rights of the Child of the Commission on Human Rights.<sup>4</sup> This chapter is divided in four main sections. It begins with a brief overview of the issues of children in armed conflict and international law. The chapter then focused on two phases of the negotiations on the Optional Protocol: 1) negotiations from October 1994 to December 1998; and 2) negotiations from January 1999 to January 2000. Again, this case study will analyze three levels of negotiations-international (Level I), EU (Level II), and domestic (Level III). Finally, a conclusion will examine the results of the research.

## ***6.2 Child soldiers in International Law***

It is estimated that around 300 000 children – boys and girls under the age of 18 - are involved in over than 30 conflicts around the world. Most of these children are considered child soldiers. A child soldier is defined as any person under the age of 18 who is part of government armies, paramilitary groups and rebel forces and who is used as a combatant,

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<sup>4</sup> The Commission on Human Rights was replaced by the Human Rights Council in March 2006.

messenger, water carrier, cook, or sexual slave. Child soldiers can be compulsorily, forcibly or voluntarily recruited and used by armed forces or groups. Poverty, abuse, discrimination are identified as possible causes that can lead children to become a member of military groups. Children may also join armed groups to avenge the violent acts they or their families have suffered or because they believe that becoming a member these groups will help protect their families. Most of these child soldiers are adolescents, but a growing number are 10 years of age or younger.<sup>5</sup>

The issue of child soldiers was first raised at the United Nations during the negotiations of the Convention of the Rights of the Child at the end of the 1980s. At that time, the issues of participation and recruitment of children in armed conflict were within the Additional Protocols I

**Table 6.1 OP-AC Case: Phases of Negotiations**

Phase of Negotiations	
Phase 1: <i>Negotiations from October 1994 to December 1998</i>	<p>■ <b>31 October-11 November 1994 and 9 February 1995:</b> First session of the Working Group on the involvement of children in armed conflicts is held in Geneva.</p> <p>■ <b>15-16 January and 21 March 1996:</b> Second session of the Working Group on the involvement of children in armed conflicts is held in Geneva.</p> <p>■ <b>20-30 January 1997:</b> Third session of the Working Group on the involvement of children in armed conflicts is held in Geneva.</p> <p>■ <b>2-10 February and 19 March 1998:</b> Fourth session of the Working Group on the involvement of children in armed conflicts is held in Geneva. Negotiations reach an impasse and are adjourned early.</p>
Phase 2: <i>Negotiations from January 1999 to January 2000.</i>	<p>■ <b>January 1999:</b> Fifth session the Working Group on the involvement of children in armed conflicts is held in Geneva for only one day.</p> <p>■ <b>10-21 January 2000:</b> Sixth and last session the Working Group on the involvement of children in armed conflicts is held in Geneva. The final text of the Optional Protocol is approved by consensus.</p> <p>■ <b>25 May 2000:</b> the UN General Assembly adopts the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.</p>

<sup>5</sup> See G. Machel, *The Impact of War on Children*, London, C. Hurst & Co./UNICEF, 2001.

and II to the four Geneva Conventions of 1949.<sup>6</sup> The two Protocols emphasized the need to offer protection of children in both international and non-international armed conflicts. Both Protocols set the minimum age for armed group recruitment and the participation of children in armed conflict at fifteen years.<sup>7</sup> Several governments felt that the Protocols were not adequately extensive and believed that should be reinforced by the inclusion of the issue of children in armed conflict in the United Nations Convention on the Rights of the Child that was negotiated at the end of the 1980s.

Some governments, such as Sweden, that joined the EU in 1995, suggested that the age of recruitment and participation should be raised from 15 to 18. On the other hand, France, the United Kingdom and the United States were more reluctant to support this position as they felt that this could become a problem in times of hostilities. The United States believed that only children below the age of fifteen should be protected against war services and pressured the other delegations to accept their formulation. This position was also supported by other countries that recruit volunteers under the age of 18 including the Netherlands and the United Kingdom.<sup>8</sup>

The Convention on the Rights of the Child was adopted in November 1989 by the UN General Assembly and became the first legally binding document that recognized children's rights. It defined a child as every human being below the age of 18 years unless under the law applicable, majority is attained earlier (Article 1). Ultimately, Article 38 of the Convention that specifically addressed the problem of children in armed conflict did not

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<sup>6</sup> The Four Geneva Conventions were adopted in 1949 and aimed to protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick, shipwrecked troops and prisoners of war) See ICRC, *The Geneva Conventions: The core of international humanitarian law*, <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions> accessed on 16/06/07

<sup>7</sup> See M.T. Dutli and A. Bouvier, "Protection of children in armed conflict: the rules of international law and the role of the International Committee of the Red Cross", *The International Journal of Children's Rights*, vol.4, no.2, 1996, pp.181-188.

<sup>8</sup> R. Bartlett, "Child Soldiers: law, politics and practice", *The International Journal of Children Rights*, vol.4, no.2, 1996, pp.117-118. and A. Sheppard, "Child Soldiers: Is the optional protocol evidence of an emerging "straight-18" consensus?", *The International Journal of Children Rights*, vol.8, no.1, 2000, pp.44.



raise the age of recruitment and participation to 18. This Article simply restated the provisions of Protocols I and II of the Geneva Conventions: states should ensure that persons who are not 15 do not take part in hostilities and should also refrain from recruiting any person who has not attained the age of 15 in the armed forces. Article 38 became the only article in the Convention that did not to apply to all children under the age of 18.<sup>9</sup>

Article 38 of the Convention attracted strong criticism both from states and from NGOs. The issue of children in armed conflict was brought up in the first session of the Committee of the Rights of the Child that had been established as a monitoring mechanism of the Convention. The Committee decided to have a general discussion on the issue during its second session in October 1992. The Committee “recognized the need for a continuous response to the outstanding and complex question of children in armed conflict” and suggested various measures to address the issue. These measures included the completion of general studies on certain aspects of the problem and the drafting of a future optional protocol to the Convention on the Rights of the Child that would increase the age of recruitment of children into the armed forces to 18.

The Committee also decided to establish a working group composed of some members who would evaluate these measures.<sup>10</sup> In its next session and following an oral report of the working group on children in armed conflict, the Committee recommended to the General Assembly to request the Secretary-General to conduct a study of ways and means of improving the protection of children from the adverse effects of armed conflicts.<sup>11</sup> A few months later, Graça Machel, a former Minister of Education and Culture of Mozambique, was appointed as the expert to undertake a comprehensive study on the issue of children in armed conflict as well as to examine existing standards and recommend ways of improving the protection of children in armed conflict.<sup>12</sup> In March 1994, following a special appeal of the World Conference on Human Rights, the Commission of Human Rights decided to establish an open-ended (that is, open to all states) inter-sessional Working Group to

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<sup>9</sup> R. Harvey, *Children in Armed Conflict. A guide to international humanitarian and human rights law*, Wivenhoe Park/Montreal, Children and Armed Conflict Unit, University of Essex and International Bureau for Children’s Rights, 2003, p.12 and p. 25.

<sup>10</sup> See UN Document CRC/C/10

<sup>11</sup> See UN Document CRC/C/16

<sup>12</sup> See UNGA Resolution A/RES/48/157

elaborate a draft optional protocol to the Convention on the Rights of the Child. The first session of the Working Group would occur in the fall of 1994.

### ***6.3- October 1994 to December 1998: Reaching an impasse***

Some 40 countries and around 30 UN bodies and agencies, international organizations and NGOs attended the first session of Working Group in Geneva in the fall of 1994. While all the participants affirmed their commitment to protect children in armed conflict, it rapidly became clear that consensus on an optional protocol on child soldiers would not be easily reached.

- *Level I*

During its first session, the Working Group held 19 meetings from 31 October to 11 November 1994 and on 9 February 1995. EU member states, France, Germany, Italy, Netherlands, United Kingdom, which were states members of the Commission, were joined by their EU colleagues Denmark and Greece and the future EU Member States Austria, Finland, and Sweden. During the first meeting of the Working Group, Nils Eliasson of Sweden was elected Chairman-Rapporteur. Sweden had been extremely active during the negotiations of the Convention of the Rights of the Child and an early supporter of the position of increasing the age of recruitment and active participation to 18 years. The Swedish government became a fierce supporter of the idea of an optional protocol that would supplement Article 38 of the Convention. The Swedish government was supported by two influential NGOs, Rädde Barnen (Save the Children Sweden) and the Swedish Red Cross. Sweden's position was clear: "it cannot be acceptable that persons who in every other sense are regarded as children under the Convention are recruited into armed forces and permitted to participate in armed conflicts". The Swedish government considered that the only solution

was that the age limit for recruitment be raised to 18 and that states commit themselves to preventing children under 18 from participating in hostilities.<sup>13</sup>

At the time of the first meetings of the Working Group, Sweden was soon to become an EU member state. Most EU Member States participating to the sessions of the Working Group did not share the Swedish position. Indeed, right from the first session of the Working Group, there were strong divergences between the positions of the Member States. During negotiations of the Convention of the Rights of the Child, France and the United Kingdom emphasized that they objected to increasing the age of recruitment and participation in hostilities. Other EU Member States were more ambivalent: Germany, while regretting the fact that Article 38 still allowed 15 years olds to participate in hostilities as soldiers, believed that compulsory military service should be possible and admissible if there was a desire to enter military service before the age of 18.<sup>14</sup>

These various positions of EU Member States mirrored the different camps that formed during the negotiations. A first group of states insisted that the minimum age of recruitment should be set at 18 years. Other participants argued that raising the age limit for recruitment did not protect children from involvement in armed conflicts. Several delegations felt that their national legislation, which under certain conditions and in certain circumstances allowed the recruitment of persons below the aged of 18 in their armed forces, would unavoidably be in conflict with the provisions of an optional protocol that would follow the “straight-18” principle.<sup>15</sup> This position reflected the national legislation of at least two EU Member States: the Netherlands and the United Kingdom.

A number of other contentious issues were discussed at the first session. These issues included the distinction between direct and indirect participation in hostilities, voluntary versus compulsory recruitment into armed forces, recruitment of children by rebel groups and other irregular armed forces, and the status of children enlisted or admitted into military

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<sup>13</sup> See UN Document E/CN.4/1994/WG.13/2/Add.2

<sup>14</sup> See UN Document E/CN.4/1994/WG.13/2/Add.1

<sup>15</sup> See UN Document E/CN.4/1995/96.

schools.<sup>16</sup> At the first session of the Working Group France, the Netherlands and the United Kingdom were among the states that reiterated the position that the limit of 18 years should not be applied to voluntary recruitment and the recruitment of students of military schools.<sup>17</sup> This position was shared by another important actor, the United States. At the end of the first session, the Working Group adopted a revised draft of the Optional Protocol. This draft would be basis for the second session of Working Group negotiations in January and March 1996.

Several substantive issues remained controversial during the second session including age limits, the question of direct or indirect participations in hostilities, and the issue of compulsory and voluntary recruitment into either governmental or non-governmental armed forces.<sup>18</sup> EU Member States were divided on most of the substantive issues. Belgium, Finland and Sweden advocated for the “straight-18” position. The Netherlands, Denmark, the United Kingdom, while more reluctant to support this strong position, were willing to compromise to reach a consensus. When the Working Group discussed which age – 17 years or 18 years – should be included in the contentious Article 1 (that dealt with the question of participation in hostilities), Finland, Sweden, Germany, the Netherlands, Denmark and Belgium supported that it remain 18 years. The United Kingdom favoured the age of 17 years was willing to agree with the majority if consensus was reached on the age of 18 years. In contrast, the delegations of the United States, Pakistan and Cuba wanted the age to be set at 17 years.<sup>19</sup>

On the issue of recruitment, almost all the parties agreed that the minimum age for conscription should be set at 18 years. However, states such as the United States, the United Kingdom and Australia argued that voluntary recruitment should be considered different from compulsory recruitment. These states main arguments focused on “opportunities for minorities and economically disadvantaged teenagers, especially in education and training” that voluntary recruitment in the armed forces offered and that could not be found in civilian

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, especially para. 90, 91, 92 and 113

<sup>18</sup> See UN Document E/CN.4/1996/102, para. 17

<sup>19</sup> See UN Document E/CN.4/1996/102

life.<sup>20</sup> The United Kingdom and the United States also pointed out that in many countries 16 and 17 years olds entered the workforce. Voluntary recruitment as a career opportunity, they argued, should therefore be available to these young people.<sup>21</sup>

Dissensions on the majority of substantive issues led the Chairman-Rapporteur to organize an informal drafting group to speed up the negotiations. The group held 12 meetings from 16 to 24 January.<sup>22</sup> Despite these meetings, the Working Group still were unable to reach a consensus on most of the substantive issues. Furthermore, the question of the political nature of the Optional Protocol was also discussed during the second session. Two main positions dominated the debate. Some delegations preferred to negotiate a “protocol of a compromise nature that could subsequently be ratified by a maximum of States,” other states, as well as members of the Committee on the Rights of the Child, supported a stronger protocol that would only be acceded to by states able to abide by its provisions.<sup>23</sup> Several delegations expressed the view that the Commission on Human Rights should take the final decision on the political nature of the protocol.<sup>24</sup>

While little progress had been made since the previous session, a number of initiatives had brought the issue of children in armed conflict on the forefront of the agenda of the international community in recent months. In August 1996, Graça Machel submitted to the General Assembly her final report entitled “Impact of armed conflict on children”. In this landmark report, Machel recommended the establishment of a Special Representative of the Secretary-General on children in armed conflict. The report also recommended that the age of recruitment and participation in the armed forces be raised to 18 years.<sup>25</sup> Consultations prior to the drafting of the report occurred in several regions, including in Europe in June 1996. The report also stressed the urgency for the international community to address the issue of children in armed conflict.

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<sup>20</sup> M.J. Dennis “Newly Adopted Protocols to the Convention on the Rights of the Child”, *The American Journal of International Law*, vol. 94, no.4 2000, p.790.

<sup>21</sup> *Ibid.*

<sup>22</sup> See UN Document E/CN.4/1996/102, para. 15.

<sup>23</sup> *Ibid.*, para. 46

<sup>24</sup> *Ibid.*, para. 51

<sup>25</sup> See UNGA Document A/51/306,

The third session of the Working Group was held from 20-30 January 1997. At this time, the divisions in the Working Group were openly acknowledged. Machel was invited to present her report and participate in the discussions. Despite Machel's appeal to raise the age of both participation and recruitment to 18 years, many states remained reluctant or even unwilling to adopt a "straight-18" protocol. On the question of the minimum age for participation in hostilities, no consensus could be found. Most states represented in the Working Group, including most EU Member States, favoured 18 years. The UK remained the only EU Member States to support a minimum age of 17 years, but also said that, for the sake of consensus, it would join the majority. The US along with Pakistan and Cuba refused to support this position and still favoured a minimum age of 17 years.<sup>26</sup> With the negotiations to a stalemate, many participants became frustrated. Several parties expressed their disappointment that the draft protocol had not been finalized in previous sessions. One delegation even suggested that it would not be useful to meet again without having first held multilateral and bilateral high-level consultations to achieve significant progress.<sup>27</sup>

A few weeks after the third session, in February 1997, the General Assembly recommended to the Secretary-General to appoint a Special Representative for children and armed conflicts.<sup>28</sup> In September 1997, Olara A Otunnu was appointed to this position. With this appointment, the issue of children in armed conflict and particularly of child soldiers attracted even more interest and pressured states to reach a consensus on the optional protocol. When the Working Group met again in February 1998 for the fourth session of the Working Group, a number of informal meetings, in the form of open-ended consultations with the Chairman, were again organized to accelerate the drafting process. While participants did agree that the key issue was that of the age of limit for participation in hostilities, no consensus could be reached on this question. A vast majority of states expressed their support for designated limit of 18 years for participation and favoured that this limit be applied to both direct and indirect participation. However, several delegations argued that the establishment of the limit of 18 years could not be considered as a practical proposal acceptable to all. Some states suggested that 17 years should be designated as the minimum age for participating in hostilities. Differences among parties also became evident

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<sup>26</sup> See UN Document E/CN.4/1997/96, para. 76 and para. 78

<sup>27</sup> *Ibid.*, para. 55 to 60.

<sup>28</sup> See UNGA Resolution A/RES/51/177

on the question of recruitment and some countries suggested that the minimum age should be set at 16 years.

By February 1998, an increasing number of EU member states were more inclined to support the ‘straight-18’ position. Sweden, Finland and Belgium had early on favoured a minimum age of 18 years for participation and recruitment, but some of their EU colleagues also began to support this stance. Although most EU Member States were willing to accept the increased age of participation as 18 years, the question of the minimum age for recruitment, however, remained a sensitive issue for a number of EU Member States. Austria, Germany, France, Italy and the Netherlands still spoke in favour of the 17 years option for voluntary recruitment. However, these states also expressed their willingness to find a compromise on the issue. Denmark gave its support for the age limit of 18 for any form of participation for compulsory recruitment and indicated that it would join consensus on 18 years also for voluntary recruitment. The United Kingdom was the most reluctant EU member states to support a “straight-18” position, preferring the age of 17 for participation and 16 for voluntary recruitment. However, the United Kingdom expressed that although the “Chairman’s perception” paper did not mirror all the British delegation’s preferences, it would not have blocked the consensus on the terms outlined in the Chairman’s perception paper.<sup>29</sup>

Other states including the United States, the Republic of Korea and Kuwait deemed the option of 18 years for Article 1 unacceptable and were unwilling to compromise on this issue. The American delegation stressed that there was a significant minority (at least six of the participating states) that preferred 17 for the age of participation. The Americans regretted that for many, an agreement was not acceptable unless the age was set at 18 and that this “all or nothing” approach was stalling negotiations.<sup>30</sup> The fourth session of the Working Group adjourned early as it became clear that it would be impossible to reach an agreement during the time allotted. Ultimately, the report of the February 1998 session of the Working Group included two different versions of the draft of the optional protocol: a rolling

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<sup>29</sup> See UN Document E/CN.4/1997/96., para.62 and 73

<sup>30</sup> UN Document E/CN.4/1997/96I., para. 65

text with several square brackets to indicate the issues of disagreement, and a “chairman’s perception” text that included text on which the chairman thought states would agree.<sup>31</sup>

Throughout the fourth session, several delegations and NGOs expressed their disappointment in the lack of progress. Several EU member states were frustrated by the impasse in negotiations. The strongest criticism was expressed by Germany that suggested that this deadlock was due to “the positions of a very small minority of delegations unable to join an emerging near consensus on practically all contentious issues”. Considering this deadlock, Germany questioned if there was any ground for the Working Group to continue. The German delegation also stated that at this time, it was the responsibility of the Commission on Human Rights to make political decisions and to provide the Working Group with guidance.<sup>32</sup> The Working Group and the Commission on Human Rights realized that there was an impasse, decided to adjourn the negotiations, and asked the Chairman of the Working Group to conduct broad informal consultations on the optional protocol. Following a proposal from Germany on behalf of the group of Western European and other States, Catherine von Heidenstam of Sweden was elected the new Chairperson-Rapporteur.<sup>33</sup> Von Heidenstam was assigned to produce a report at the end of 1998 that would include recommendations or ideas on the best way for the formal negotiations to progress.

Through 1998, the Chairperson conducted several broad informal consultations with representative of the states involved in the Working Group and also the Committee on the Rights of the Child, the Special Representative of the Secretary-General for children in armed conflict, the International Committee of the Red Cross (ICRC). The “pause” in the formal negotiations also allowed a civil society movement to emerge and place international pressure on the parties to successfully conclude the negotiations.<sup>34</sup> Frustrated by the lack of progress in negotiations, six NGOs - Amnesty International, Human Rights Watch, International Federation Terre des Hommes, Jesuit Refugee Service (Geneva), the Quaker United Nations Office (Geneva) and the Swedish Save the Children (on behalf of International Save the Children Alliance) - formed the coalition that would advocate the

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<sup>31</sup> See *Ibid.*, Annex I and Annex II

<sup>32</sup> *Ibid.*, para. 48

<sup>33</sup> See UN Document E/CN.4/1998/102 Add.1



adoption of an optional protocol banning the recruitment and participation of children under the age of eighteen. On 30 June 1998, the Coalition to Stop the Use of Child Soldiers was publicly launched, with the participation of UNICEF, UNHCR and the UN Special Representative for children in armed conflict, at press conferences in Geneva and New York.

Around the same time, at the United Nations, the issue of the children in armed conflict gained more international attention. On 11 June 1998, Portugal, which held the Presidency of the Security Council at the time, invited the Special Representative of the Secretary-General for children in armed conflict to informally brief the Security Council. The Special Representative had visited several countries where children were used as soldiers, including Sierra Leone, Liberia, Sri Lanka and Kosovo. His briefing prompted the Security Council to formally place the issue on its agenda. On 29 June 1998, the first UN debate on children in armed conflict was held at the Security Council. Several states, including several EU member states, seized the opportunity not only to reaffirm the urgency of concluding the negotiations on the optional protocol, but also to restate their position on the age limit for recruitment and participation in hostilities.

During the debate, it became apparent that the EU did not have a united position. The EU statement delivered by the United Kingdom confirmed the divisions within the EU on some of the issue of the Optional Protocol. The statement restated the European Union belief that the issue of children and armed conflict deserved “a particularly important place on the international political agenda”, reaffirmed the importance of the Convention of the Rights of the Child and reaffirmed its support for the inclusion in the future international criminal court statute of the prohibition against the use of children in armed conflict.<sup>34</sup> Regarding the optional protocol, the EU remained fully committed to the aim of successfully concluding the negotiations on the draft protocol. However, the EU statement did not address the issue of the minimum age for recruitment and participation. This was not unexpected because EU

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<sup>34</sup> R. Snyder “The Optional Protocol on the Involvement of Children in Armed Conflict” in R. McRae and D. Hubert (eds.) *Human Security and the New Diplomacy*, Montreal and Kingston: McGill – Queen’s University Press, 2001, p.155.

<sup>35</sup> The Rome Statute establishing the International Criminal Court was adopted by 120 countries on 11 July 1998. The International Criminal Court statute classifies the conscription, enlistment or use in hostilities of children under the age of 15 as war crimes. On this point, see L. Moreno-Ocampo, “The Rights of Children and the International Criminal Court” in K. Arts and V. Popovski (eds.),

Member States, and more importantly the United Kingdom, were reluctant to support the “straight-18” position. France, in its statement also supported the prompt conclusion of the optional protocol, but did not address the age debate. In contrast, Portugal and Sweden reaffirmed their support for the ‘straight-18’ position. Germany and Italy stressed that their support for 18 years as the minimum age for both direct and indirect participation.<sup>36</sup>

The Security Council debate on children and armed conflict and the launched of the Coalition to Stop the Use of Child Soldiers had firmly placed the issue of children in armed conflict on the international agenda. The issue returned to the limelight at the UN in October 1998, when the Secretary-General announced his decision to set minimum age requirements for United Nations peacekeepers. The Secretary-General asked contributing governments to send troops that would preferably be 21 years and in no case less than 18 years. He also requested governments not to send civilian police and military observers younger than 25 years to serve in peacekeeping operations. The Secretary-General adopted this measure not only to promote the rights of the child, but also to create an example for police and military forces around the world.<sup>37</sup>

In December 1998, after a year of informal consultations, the Chairperson of the Working Group on the draft optional protocol presented her report to the Commission on Human Rights. All parties of the Working Group agreed of the urgent need to protect children from becoming involved in armed conflict. The successful conclusion of negotiations on the draft optional protocol remained a priority. The conclusions of the report highlighted that after almost four years of negotiations, little progress had been made on the two main issues: participation, both direct and indirect, and recruitment. The Chairperson felt that she needed additional time and further consultations before she could formulate recommendations. If more time was needed, Heidenstam also stressed the urgency of the matter: parties should aim to finalize the draft optional protocol by the tenth anniversary of the Convention of the Rights of the Child in 1999.<sup>38</sup> However, it was another year before the Working Group reconvened to initiate the last phase of the negotiations of the optional protocol.

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*International Criminal Accountability and the Rights of Children*, The Hague, Hague Academic Press, 2006, pp.111-117.

<sup>36</sup> See UN Security Council, Document S/PV.3896.

<sup>37</sup> See United Nations, *Secretary-General decides to set minimum age requirement for UN peacekeepers*, Press Release, SG/S/6777, PKO/79, 29/10/999

<sup>38</sup> See UN Document E/CN.4/1999/WG.13/3

- *Level II*

At the time of first session of the Working Group, the European Union's foreign policy regarding children's rights, including children's rights in armed conflicts, was practically nonexistent.<sup>39</sup> In fact, prior to the adoption of the Amsterdam treaty, no specific reference to children rights existed in the EU treaties. While Article 29 of the Treaty of Amsterdam provided for the first time a legal basis for intergovernmental cooperation to prevent and combat "offences against children,"<sup>40</sup> emphasis was not placed on the protection of children in armed conflict. At the EU level, the protection of children in armed conflict was primarily portrayed as a development and an external human rights issue. While the EU's external human rights policy can be both a first and second pillar issue, the implementation of this policy through international organizations such as the UN is a CFSP issue.

The issue of a draft optional protocol on children in armed conflict was absent from most negotiations at the Council of Ministers, and at the Council working group on human rights (COHOM), in the late 1990s. No specific CFSP instruments to address the issue of children in armed conflict were adopted between 1994 and 1998. This is perhaps not surprising as all the EU Member States that held the EU Presidency during the first four sessions of the Working Group (Germany in the second-half of 1994, France and Spain in 1995, Italy and Ireland in 1996, The Netherlands and Luxembourg in 1997, and the UK and Austria in 1998) did not support the "straight-18" position and were, at first, opposed to raising the minimum age for recruitment to 18 years. The United Kingdom was also strongly against increasing the age of participation in hostilities to 18 years. By 1998, only four EU Member States (Belgium, Denmark, Spain and Sweden) had a minimum age for recruitment set at 18 and two of these states (Denmark and Spain) at that time did not favour the "straight-18" principle. Furthermore, Finland and Sweden two active players in the negotiations as well as major supporters of "straight-18" position only joined the EU in January 1995. As "new

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<sup>39</sup> See M. van Reisen and A. Stefanovic, *Children's Right in European Foreign Policy*, Position paper for the closing conference "The Netherlands in Europe, Europe in the World", The Hague, 2 December 2004.

<sup>40</sup> See S. Ruxton, *What about us? Children's Rights in the European Union. Next Steps*, Brussels, EURONET, 2005.

members” of the EU and as part of a minority of states advocating a stronger protocol, these two states were not in the best position to influence negotiations at the EU level.

Nevertheless, the European Union was perceived as an influential actor in the protection of children in armed conflict. Indeed, Olara Otunnu, following his appointment as the Special Representative for children and armed conflicts, “made it a priority to establish a strong cooperation with the European Union and its institution” and to encourage the EU “to make the protection of children affected by armed conflict a significant aspect of its own agenda”.<sup>41</sup> The Special Representative concentrated his efforts on two institutions: the European Commission and the European Parliament.

Regular consultations were organized with European Commissioners, in particular the Commissioner for Humanitarian Affairs and the Commissioner for Development as well as with an inter-service group of senior officials from the Directorates-General concerned with external relations, social affairs, development, humanitarian affairs, human rights, and the management of aid to non-members states. The Special Representative also encouraged the Commission to introduce the issue of child soldiers in its programme activities.<sup>42</sup>

In November 1998, the Special Representative, on the request of the Coalition to Stop the Use of the Child Soldiers, addressed the European Parliament. Following this meeting, the European Parliament became the first EU institution to draw attention to the issue of children in armed conflict when it adopted a “Resolution on Child Soldiers” in December 1998. The Resolution supported the adoption of an additional protocol to the Convention on the Rights of the Child that would prohibit the recruitment and the participation of children under 18 and called on the EU to support this initiative.<sup>43</sup> It was also the result of a strong advocacy campaign launched by Human Rights Watch and other Brussels-based NGO that targeted the European Union and the European Institutions.

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<sup>41</sup> see UN Document A/54/430

<sup>42</sup> *Ibid.*

<sup>43</sup> European Parliament, *Resolution on Child Soldiers*, Resolution B4-1078, 17 December 1998.

Strong dissensions between Member States made it difficult for the EU to speak with a single voice during the Working Group negotiations. Yet, the European Union recognized the urgency to address the question of child soldiers. In June 1998, the EU Presidency hosted a symposium on children affected by armed conflicts. The symposium had a number of objectives: to provide an opportunity for advocacy on the issue, to generate support for the work of the Special Representative, and to give another occasion to the governments to discuss critical issues regarding this problem.<sup>44</sup> This symposium was particularly significant as the United Kingdom held the Presidency at that time. In addition, and perhaps for the first time, the EU was perceived as an active player on the issue of child soldiers.

- *Level III*

In the mid-1990s, the recruitment and participation in armed conflicts of person under the age of 18 were contentious issues in a number of EU member states. Although the issue of child soldiers was considered to be a human rights and development issue, the signature of an optional protocol on child soldiers would have a direct effect on armed forces across Europe. During the first phase of the negotiations of the optional protocol, few EU Member States supported the “straight-18” position. No Member States who held the EU Presidency (including France, Germany and the United Kingdom) were part of that group. Furthermore, some of these countries (Spain, Ireland and Luxembourg) only attended some and not all of the four sessions of the Working Group.

When negotiation on the Optional Protocol first began in October 1994, Germany held the Presidency of the EU. Germany, although it did not favour the “straight-18” standard, pressed for increasing the age of recruitment and participation. In the early phases of negotiations, Germany’s stance on the issues of recruitment and participation mirrored the German laws on the subject. The German Law on Military Service allowed the voluntary recruitment of person of the age of 17. The German government also claimed that 17 year old children were prohibited from participating in hostilities.<sup>45</sup> Throughout the first sessions of the Working Group, Germany remained committed to the issue of the protection of

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<sup>44</sup> See *Hansard*, 2 December 1998, Column: 844.

<sup>45</sup> Coalition to Stop the Use of Child Soldiers, “Germany”, *Child Soldiers: CRC Country Briefs*, London, Coalition to Stop the Use of Child Soldiers, 2003.

children in armed conflict. In 1998, in a speech given to mark the 25th anniversary of Germany's UN membership, the German Foreign Minister Klaus Kinkel emphasized the need to protect children in armed conflict and eagerly supported the idea of a supplementary protocol to the UN Convention on the rights of the Child that would offer better protection to these children.<sup>46</sup> Germany's commitment to the issues and its relationship with the Coalition to Stop the Use of Child Soldiers would reveal itself crucial in the last phase of the negotiations.

France, the next country to hold the Presidency, also championed for 17 as the age for voluntary recruitment but the age of 18 for direct participation in armed conflicts. France believed that this was a good compromise between the "straight-18" position and the position of states, such as the United Kingdom, Pakistan and Iran, that wished to set the age of voluntary recruitment at 16 years. This position reflected French national legislation already in place. The recruitment of persons under the age of 17 has been prohibited in France since 1972. During first four sessions of the Working Group, France also introduced a reform of its military service and implemented a transnational programme to fully professionalize its armed forces. As a result of this reform, the age of compulsory recruitment was set at 18 years.<sup>47</sup> Many of the issues discussed in the Working Group were also addressed at the national level in the context of the reform.<sup>48</sup>

The positions of Italy and Austria, which also held the EU presidency during the first four sessions of the Working Group, were quite similar to their French and German colleagues. In fact, in most of the sessions of the Working Group Italy and Austria were with France and Germany as countries that held a middle position. These states were in favour of increasing the minimum age for participation to 18 years, but not for voluntary recruitment. However, on these issues, they were willing to find a compromise. The question of recruitment had recently been at the centre of national debate in Austria. The Austria Defense Law of 1990

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<sup>46</sup> Speech by Foreign Minister Klaus Kinkel at a ceremony to mark the 25th anniversary of Germany's membership of the United Nations hosted by the German United Nations Association Bonn, September 14, 1998.

<sup>47</sup> See M. Fromet, *Rapport fait au nom de la Commission des Affaires étrangères sur le projet de loi adopté par le Sénat, autorisant la ratification du protocole facultatif relative aux droits de l'enfant concernant l'implication des enfants dans les conflits armés*, Assemblée Nationale, no. 3564, 30/01/2002.

had determined that a male citizen could not be called for military service before he turned 18, but allowed voluntary recruitment for the age of 17. This provision was included to allow children who graduated from high school at 17 (instead of 18) to join the military service.<sup>49</sup> In Italy, while only men over 18 were liable for military service, voluntary recruitment was possible from the age of 17. In late 1990s, a debate about compulsory recruitment, lead the Italian government to propose a reform of the armed forces. A few years later, but only after the signature of the Optional Protocol, the reform introduced by the Italian government led to adoption of the prohibition of participation of under-18s in armed conflict (in 2000) as well the prohibition to recruit 17 years-olds (in 2001).<sup>50</sup>

On the issue of recruitment, the Netherlands, the EU Presidency in the first-half of 1997, were less willing to compromise than their Austrian and Italian colleagues. In the beginning of the 1990s, the Dutch military forces had begun a widespread reform. Conscription was suspended in 1996 and armed forces were gradually becoming all-volunteer forces. This move to a professional army was the reason invoked by the Dutch Government to allow a minimum age of 16 for voluntary recruitment. This follows the Civil Code of the Netherlands that permits individuals between the ages of 16 and 18 to choose their own employment on conditions of parental or legal permission.<sup>51</sup> With the United Kingdom, the Netherlands would be one of the states less willing to compromise on the issue of recruitment.

Indeed, the United Kingdom's reluctance to increase the age of recruitment and participation to 18 years was a significant obstacle in the negotiations of the optional protocol. The British government, supported by its Ministry of Defence, justified its position by stating that the British Armed Forces were struggling to recruit the numbers required to fulfill all their military commitments and that under-18s provided an important source for recruitment.<sup>52</sup>

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<sup>48</sup> See "France" in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, Coalition to Stop the Use of Child Soldiers, 2001, p.171-172.

<sup>49</sup> "Austria" in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, Coalition to Stop the Use of Child Soldiers, 2001, p.76.

<sup>50</sup> "Italy" in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, Coalition to Stop the Use of Child Soldiers, 2001, p.211-212.

<sup>51</sup> "Netherlands" in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, Coalition to Stop the Use of Child Soldiers, 2001, p.272-274.

<sup>52</sup> R. Harvey, *The NGO report to the Committee on the Rights of the Child: The Children and Armed Conflict Unit's submission*, childRIGHT, Issue 187, June 2002.

The British government, however, specified that the issue of children in armed conflict remained one of its priorities. Soon after Olara Otunnu was nominated Special Representative for children and armed conflicts, the British government provided £200,000 to support his work.<sup>53</sup> In June 1998, the UK, which then also had the EU presidency, wished to show its commitment to the question of child soldiers and the United Nations work in this area: the British Secretary of State for International Development, jointly with the Special Representative for children and armed conflicts, was thus appointed chair of the symposium on children affected by armed conflicts. Although, the UK supported the work of the UN and the Special Representative, it was still perceived as one of the states responsible for the stalemate in the negotiations.

#### **6.4 - January 1999- January 2000: The final negotiations**

- *Level I*

The Working Group on the draft optional protocol met for only one day in January 1999 as most participants recognized that it would be impossible to reach an agreement during this fifth session. At the session, the Deputy High Commissioner for Human Rights, the Special Representative of the Secretary-General for children and armed conflicts and the Vice-Chairman of the Committee on the Rights of the Child addressed the Working Group and urged the parties to conclude their work quickly. The Special Representative also reiterated his support for raising the age limit for recruitment and participation in hostilities to 18 years and the Vice-Chairman of the Committee on the Rights of the Child stated that the Committee had been naïve to believe that because the optional character of the future protocol, the need for consensus would not be invoked to hinder its adoption.<sup>54</sup> Despite the fact that the Working Group did not discuss the optional protocol during this session, the session was useful as additional pressure was placed on the states parties to find a consensus and to finish their work on the draft optional protocol.

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<sup>53</sup> *Hansard*, 25 March 1998, Column : 177

<sup>54</sup> See UN Document E/CN.4/1999/73



Around this time, news stories and images of children used as soldiers in Angola, Liberia, Sierra Leone, Sri Lanka and Colombia also helped increase international pressure for the parties to find a consensus on the draft protocol. The Coalition to Stop the Use of Child Soldiers also multiplied its campaigning efforts and organized three conferences in 1999. The first conference, the African Conference on the Use of Children as Soldiers was held in Mozambique in April 1999 and was attended by more than 250 representatives of governments and civil society. The Conference adopted a strong declaration, the Maputo Declaration, which called for the rapid adoption of the legal standards and measures prohibiting the use of children under the age of 18 years in military services. The Maputo Declaration was later endorsed by the Organization for African Unity Assembly Heads of States and Governments in July 1999. A second conference was organized in Montevideo, Uruguay in July 1999. The Conference focused on the use of child soldiers in Latin America and the Caribbean and produced another strong declaration.

A third Conference was organized in October 1999. This conference is significant for this case study as it was hosted by the German Foreign Ministry in Berlin and co-sponsored by the European Community Humanitarian Office (ECHO). The conference attracted 180 representatives from civil society and 35 governments including all EU Member States. This conference gave NGOs the opportunity to lobby those European states that continued to recruit children under 18, such as France, Germany, the Netherlands, Austria, Luxembourg and the UK. The Conference also highlighted one specific EU Member State: the United Kingdom was singled out as the worst offender in Europe for sending children under 18 into combat.<sup>55</sup> The Berlin Declaration adopted at the end of the Conference called states to establish international standards that prohibit all participation in armed conflict of persons under the age of 18 years. However, the Conference was unsuccessful in achieving a consensus on an age limit for recruitment. Austria, France, Germany, Luxembourg, the Netherlands and the United Kingdom refused to support a call for the prohibition on recruitment of children under 18.<sup>56</sup> Yet, the Conference was considered a success as for the first time nearly all EU Member States agreed to support the prohibition of the participation in armed conflicts of children under 18 years.<sup>57</sup> Only the United Kingdom remained opposed

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<sup>55</sup> D. Pallister, "UK in dock over child soldiers", *The Guardian*, Tuesday 19/10/1999.

<sup>56</sup> See United Nations Non-Governmental Liaison Service, *NGLS Go Between*, 78, December 1999-January 2000, pp.18-19.

<sup>57</sup> Human Rights Watch, *World Report 2000*, New York, Human Rights Watch, 2000.

and to avoid having to abstain or vote against this provision, the UK delegation withdrew from the room when the issue was discussed.<sup>58</sup>

The debate on the issue of child soldiers was reignited in June 1999 when the International Labour Organisation (ILO) adopted Convention 182 that defined the forced and compulsory recruitment of children for use in armed conflicts as one of the worst forms of child labour. The Convention also set 18 as the minimum age for compulsory recruitment.<sup>59</sup> Several states, including Denmark, France, Italy and Spain had advocated for a broad prohibition on any participation in armed conflicts by people under the age of 18, but because of the opposition of the United States, the United Kingdom, and the Netherlands, the Convention only addressed the issue of forced or compulsory recruitment.<sup>60</sup> Nevertheless, the ILO Convention was recognized as a landmark treaty as it was first international agreement to prohibit certain forms of involvement in military services of children under 18.<sup>61</sup>

A few weeks later, in August 1999, the Security Council held its second open debate on children in armed conflict where Finland presented the view of the European Union. In its statement, the EU expressed that it remained fully committed to the aim of the successful conclusion of the work on the optional protocol and gave its full support to the work of the chairperson, but did not mention a minimum age for recruitment and participation.<sup>62</sup> Nevertheless, EU Member States felt pressured to successfully conclude negotiations on the Optional Protocol. Even the British delegation in its contribution to the debate declared that the UK would not block any consensus reached.<sup>63</sup> At the closing of the debate, the Security Council adopted resolution 1261, its first resolution on the issue of children in armed conflict. Resolution 1261 recognized the harmful and widespread impact of armed conflicts on children and identified the issue has having long-term consequences on international peace, security, and development. It requested states “to intensify their efforts to ensure an end to the recruitment and use of children in armed conflict in violation of international law.”<sup>64</sup> The resolution also supported the work of the Working Group on the draft optional protocol and expressed the hope that the Working Group would make further progress and

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<sup>58</sup> R. Stohl, “European Act on Child Soldier Issue”, *Weekly Defense Monitor*, Centre for Defense Information, Vol.3, Issue 42, 28 October 1999,.

<sup>59</sup> See International Labour Organisation, *Convention 182, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, Geneva, 1999.

<sup>60</sup> See Human Rights Watch, *op.cit.*

<sup>61</sup> *Ibid.*

<sup>62</sup> See UN Security Council Document S/PV.4037

<sup>63</sup> *Ibid.*, p.7.

<sup>64</sup> See UN Security Council Resolution, S/RES/1261, para.13

finalize its work. The resolution did not, however, address the debate on the age limit for recruitment or participation.

When the Working Group on the draft protocol reconvened in January 2000, it had been nearly two years since the Working Group adjourned its meeting. During those two years, the Chairperson, Heidenstam was extremely active. She organized several consultative meetings in New York and Geneva and held bilateral consultations. She accompanied the High Commissioner for Human Rights and the Special Representative of the Secretary-General for children in armed conflict on some visits and the Minister for Foreign Affairs of Sweden to the European Conference in Berlin organized by the Coalition to Stop the Use of Child Soldiers. The Chairperson also used international, regional and bilateral meetings, including the ILO Conference on the Worst Forms of Child Labour, to gather information and conduct consultations regarding the draft optional protocol.<sup>65</sup> Following these various consultations, the Chairpersons recommended that the draft optional protocol should clearly address the following issues: “the setting of a minimum age of 18 years for participation in hostilities, 18 years for enforced and compulsory recruitment into armed forces and 18 years for voluntary recruitment, for an opt-out provision allowing for a minimum age of 17 years with reference to national legislation”. The Chairperson also believed that the issues of non-States parties, compliance, surveillance and military schools needed special consideration.<sup>66</sup>

The sixth session of the Working Group was held from 10 to 21 January 2000. At this session states parties felt the urgency to find a consensus and appeared committed to achieve an agreement. The UN planned to hold a Special Session on Children in 2001 and the failure to conclude negotiations on a draft protocol could have costly political implications.<sup>67</sup> Despite the willingness of the parties to finish the work, negotiations were extremely difficult during the session. The Chairperson presented her recommendation to the Working Group and also suggested to use the “Chairperson’s perception” paper annexed at the adjourned session of February 1998. The United States also presented to the parties its own version of the draft optional protocol.<sup>68</sup>

To accelerate the negotiating process, the Working Group used both formal and informal meetings and appointed coordinators for nine main issues: non-state actor, compliance, national implementation, international cooperation and assistance, enforced recruitment,

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<sup>65</sup> See UN Document E/CN.4/2000/WG.13/3, para. 10-12.

<sup>66</sup> *Ibid.*, para 18

<sup>67</sup> R. Snyder, *op.cit.* p.156.

participation in hostilities, voluntary recruitment, military schools and the preamble. It was evident from the beginning of the negotiations that the most complex issues would be voluntary recruitment and participation in hostilities. A small number of countries remained opposed to the “straight-18” position. However, during the two years recess of the Working Group, progress had been achieved on the question of participation in hostilities. In previous session, a small minority of states including the United States had vigorously defended their position to allow 17 years olds to participate in hostilities and therefore, had stalled negotiations on this issue. In October 1999, President Clinton announced a shift in the American position, when at a US-Canada Summit he recognized the need to find a compromise and agreed to focus on the issue of deployment rather than the age of recruitment as the critical issue.<sup>69</sup>

After arduous negotiations, the following compromise was agreed: state parties would seek all feasible measures to ensure that members of their armed forces who had not attained the age of 18 years did not to directly participate in hostilities. A number of states supporting the ‘straight-18 principle, including EU Member States such as Sweden, Italy, Belgium and Denmark, were left dissatisfied: the use of the term “feasible” implied that a soldier younger than 18 years could participate in hostilities.<sup>70</sup> Yet, in the spirit of compromise they approved the proposed text.

A compromise on the issue of voluntary recruitment proved to be more difficult to find. There was a clear division on this question. Some delegations supported the “straight-18” formula, while other delegations favoured other options such as a lower minimum age; the opt-in/opt-out clause; or even not to include at all any reference to the age for voluntary recruitment in the optional protocol.<sup>71</sup> The states that supported the “straight-18” principle realized that their position would not be accepted by the other delegations and again agreed to compromise. An article based upon the text provided by the United States was adopted. The article stipulated that states parties must deposit a binding declaration upon ratification or accession to the optional protocol that would raise the minimum age for the voluntary recruitment of person into their national forces from that set out in article 38 of the Convention on the Rights of the Child (i.e. 15 years). States would also be obligated to

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<sup>68</sup> See UN Document E/CN.4/2000/WG.13/2/Add.1

<sup>69</sup> *Ibid.*, p.157.

<sup>70</sup> Dennis, *op.cit.*, pp.791-792. and R. Stohl “Children in conflict: Assessing the Optional Protocol”, *Conflict, Security and Development*, vol. 2, no.2, 2002, p.138.

<sup>71</sup> See UN Document E/CN.4/2000/WG.13/CRP.1/Rev.1, para. 61.

maintain safeguards to ensure that such recruitment is voluntary, or with the consent of the person's parents or legal guardians and that the person provide reliable proof of age. On this issue, the protocol again failed to meet several of the EU member states expectations.

Finally, the contentiousness of one article caused the negotiations to continue until the last half hour of the time allotted for negotiations.<sup>72</sup> The article stipulated that states that were not parties to the Convention on the Rights of the Child (i.e. Somalia and the United States) would be allowed to become parties to the optional protocol. Some delegations such as Belgium specified that this should be an exception and not a precedent. Other states, including France and Sweden, reluctantly agreed to support this decision. The French delegation's strong objection on the grounds of principle even threatened the adoption of the whole optional protocol.<sup>73</sup> Ultimately, the article was approved.

On 25 May 2000, after six years of negotiations the UN General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Portugal, on behalf of the EU welcomed the adoption of the Optional Protocol on the involvement of children in armed conflict (along with the adoption of the Optional Protocol on the sale of children, child prostitution and child pornography). It also stated that the Protocol constituted a fundamental complement to Convention on the Rights of the Child and praised the work of the Working Group and "the remarkable spirit of co-operation and constructive approach"<sup>74</sup> demonstrated by the participants of the Working Group that allowed the successful outcome of the negotiations. The Optional Protocol was signed by all 15 Member States of the EU in September 2000 and entered into force on 12 February 2002.

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<sup>72</sup> Snyder, *op.cit.*, p.158.

<sup>73</sup> J. Mermet, "Protocole facultatif à la Convention relative aux droits de l'enfant concernant l'implication d'enfants dans les conflits armés : Quel progrès pour la protection des droits de l'enfants ? ", *Actualités et Droit International*, Juin 2002, p.4, fn. 11

<sup>74</sup> See Statement by Ms. Rosa Batoréu, representative of Portugal, on behalf of the European Union, to the Plenary of the General Assembly 54<sup>th</sup> Session (Adoption by the General Assembly of the Optional Protocols to the Convention of the Rights of the Child, on the involvement of the children in armed conflict and on the sale of children, child prostitution and child pornography. New York, 25 may 2000. A/54/L.8

- *Level II*

Germany assumed the presidency of the EU in early 1999. In a debate on the protection of civilians in armed conflicts at the United Nations in February 1999, Germany declared that the EU considered increasing the age limit for participation in armed conflicts from 15 to 18 as an important step to protect children in conflicts.<sup>75</sup> A consensus within the EU regarding the age of participation was slowly emerging. By the time of the European conference on the Use of Children as Soldiers in October 1999, all EU member states with the exception of the United Kingdom were willing to support an age limit of 18 for participation. At the conference, the German Foreign Minister Fischer confirmed that the issue of the age limit for recruitment and participation was being considered at the EU level. He believed that all EU Member States, including the UK, realized the need for the EU to achieve a common position on this question.<sup>76</sup> However, the German Presidency did not make any declarations regarding the EU's position on the Optional Protocol.

The Finnish Presidency of the European Union that followed was strongly in favour of the straight-18 position. While the Finns did support this position in various international arenas, they struggled to persuade their EU colleagues to adopt a unified position regarding the Optional Protocol. EU Member States only agreed to support declarations that stated that the EU was fully committed to the aim of the successful conclusion of the work on the optional protocol, but that did not mention the age debate. Indeed, in 1999, the Council of the European Union in its annual report on human rights reaffirmed the need to raise the current minimum age limit set by Article 18 of the Convention on the Rights of the Child for the recruitment and participation of any person in armed conflicts. It also encouraged the early conclusion of the work of the Working Group on a draft optional protocol, especially in the view of the tenth anniversary of the entry into force of the Convention. The Council also highlighted the EU's role in advocating a provision that recognized conscripting, enlisting and using children as war crimes.<sup>77</sup> However, the Council did not recommend a minimum age for recruitment or participation.

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<sup>75</sup> See UN Security Council Document S/PV.3980

<sup>76</sup> Pallister, *op.cit.*

<sup>77</sup> Council of the European Union, *Annual Report on Human Rights*, Luxembourg, Office for Official Publication of the European Communities, 2000, pp.46-48.

With clear dissensions in the EU camp, Finland turned to another forum to declare its support for a strong Optional Protocol. In August 1999, Finland, joined by two EU Member States, Denmark and Sweden, as well as two European States, Iceland and Norway, signed the *Declaration by the Nordic Foreign Ministers against the Use of Child Soldiers*. The Declaration stated that the existing international protection of children in armed conflict was insufficient. It stressed the “crucial importance” of the work of the Working Group and supported the “urgent finalization of an optional protocol on the occasion of the tenth anniversary of the Convention on the Rights of the Child”. The five Nordic states also declared that they were determined to have an Optional Protocol that would ensure that persons below the age of 18 years would not be recruited into the armed forces or allowed to participate in hostilities.<sup>78</sup> What Finland had achieved with its Nordic neighbours, it did not achieve with its EU colleagues.

If the Council of Ministers remained quiet on the issue of child soldiers, both the European Parliament and the European Commission reiterating their commitment to the issue of child soldiering. In April 1999, the ACP-EU Joint Parliamentary Assembly adopted a comprehensive resolution on child soldiers.<sup>79</sup> The European Commission also demonstrated its commitment to the question of children in armed conflict. In 1999, the UN Special Representative for children and armed conflict held regular meetings with the Commissioner for Development and Humanitarian affairs, Poul Nielsen. These meetings were successful as the European Commission announced that the protection of the rights of the child including those of child soldiers would be one of the five thematic priorities for 1999 of the European Initiative for Democracy and Human Rights (EIDHR). The EIDHR brought together a series of budget headings specifically dealing with the promotion of human rights and aimed to complement the EU’s Common Foreign and Security Policy objectives in the field of human rights, democratization and conflict prevention.<sup>80</sup> In October 1999, Commissioner Nielsen addressed the Berlin Conference organized by the Coalition to Stop the Use of Child Soldiers and hosted by the German Ministry of Foreign Affairs. The Commissioner stated that the European Commission strongly endorsed the aim of the campaign to stop the use of child soldiers and reaffirmed the support of ECHO for projects that protected children in

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<sup>78</sup> See UN Document A/54/419

<sup>79</sup> See OJ C 271, 24.9.1999, p.46

conflict zones.<sup>81</sup> By this time, ECHO was already funding projects in Sierra Leone and Guinea that focused on war-affected children.

- *Level III*

With the creation of the Coalition to Stop the Use of Child Soldiers, NGO involvement of the issue of child soldiers intensified. National campaigns around Europe actively lobbied several EU member states to adopt national measures to prevent the involvement of children in hostilities. Following an intense advocacy campaign, the Danish government announced in June 1998 that it would increase the minimum age for voluntary recruitment in its armed forces from 17 years to 18 years.<sup>82</sup> In 1999, UNICEF Belgium, with the support of several Belgian and international NGOs, launched the Belgian Coalition to Stop the Use of Child Soldiers. Since the Belgian government was already a firm supporter of “straight-18” principle, the Belgian Coalition focused on raising public awareness and lobbying the Belgian authorities to be more proactive and campaigned on the issue at the international level.<sup>83</sup>

The Coalition also effectively established a relationship with Germany, which held the EU Presidency in early 1999. In October 1999, the Ministry of Foreign Affairs of Germany agreed to host the European conference on the Use of Children as Soldiers. At the Conference, Joschka Fischer, Minister of Foreign Affairs, expressed his personal support for the minimum age of 18 for all military recruitment and participation in armed conflict. The Minister of Defence, Rudolf Scharping, also attended the Conference. While he declared his support for a minimum age of 18 years for participation, he remained silent on the issue of recruitment.<sup>84</sup> Several proposals were made in the German Bundestag to raise the age limit of recruitment to 18 years or to ask Germany to support the “straight-18” principle in the

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<sup>80</sup> See [http://ec.europa.eu/europeaid/projects/eidhr/eidhr\\_en.htm](http://ec.europa.eu/europeaid/projects/eidhr/eidhr_en.htm) accessed 29/07/2007.

<sup>81</sup> See Statement by Poul Nielson, Member of the European Commission at the European Conference on the use of children as soldiers, Berlin, 18/10/1999, Document Speech/99/131

<sup>82</sup> Human Rights Watch, *op.cit.*

<sup>83</sup> C. Gramizzi, Nkundabagenzi, F., Nolet, S. and Santopinto, F., *Enfants soldats, armes légères et conflits en Afrique- Les actions de la coopération au développement de l'Union Européenne et de la Belgique*, Brussels, GRIP, 2003, pp.25-26.

<sup>84</sup> “Germany” in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, Coalition to Stop the Use of Child Soldiers, 2001, pp. 177-178..



negotiations of the Optional Protocol.<sup>85</sup> However, the German government was unwilling to adopt this position during the final negotiations of the Working Group.

Both Finland and Portugal, which respectively held the EU presidency during the two last sessions of the Working Group, were supporters of the “straight-18” principle. Finland, with its neighbour Sweden, had initially favoured the straight-18 position. In the late 1990s, Finnish law still allowed the 17-year-olds to be conscripted; however, most call-ups usually concerned only 19 or 20-year-olds.<sup>86</sup> Finland was therefore willing to sign a Protocol that would prohibit both the recruitment and the participation of under-18s. Furthermore, the revised Finnish Penal Code considers that a person, who in an act of war violates the provision of an international agreement binding on Finland, shall be sentenced for a war crime. The adoption of the Optional Protocol meant that the recruitment of a person under the age of 18 years during hostilities would be deemed a war crime.<sup>87</sup>

In August 1999, Finland, with Denmark, Iceland, Norway and Sweden, signed the *Declaration by the Nordic Foreign Ministers against the Use of Child Soldiers*. This Declaration was perhaps the result of the extensive relationship that had developed between the Coalition and the Nordic States. Indeed, the Coalition had numerous and constant exchanges and widely cooperated with the Nordic States; these partners discussed both the definition of strategies and general political goals.<sup>88</sup> Upon its signature of the Optional Protocol in September 2000, Finland declared that the minimum age for both the recruitment and voluntary service was 18 years.<sup>89</sup> At an event organised by the Coalition in January 2001, Finland stated that the Optional Protocol was a “compromise” and “remained far behind the objectives of the Finnish government.” The Finns stated that they had to compromise not only on voluntary recruitment, but also on participation in armed conflicts,

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<sup>85</sup> Coalition to the Use of Child Soldiers, *Child Soldiers: CRC Country Briefs, Germany*, 2003. CSC DOC.CRC/2/2003

<sup>86</sup> “Finland” in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, 2001, p.170.

<sup>87</sup> see CRC/C/OPAC/FIN/1

<sup>88</sup> See S. Cattaneo, ‘*New Multilateralism*’ and ‘*High Politics*’: *State-NGO Relations on Human Security Issues*. Thèse présentée à l’Université de Genève pour l’obtention du grade de Docteur en relations internationales (science politique), Institut des Hautes études internationales, Geneva, 2007, p.257

<sup>89</sup> “Finland”, *Declarations and Reservations to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, available at <http://www.unhchr.ch/html/menu2/6/crc/treaties/declare-opac.htm> accessed on 30/08/2007

because they favoured a stronger wording and wanted a clause that prohibited any reservations to the Protocol”.<sup>90</sup>

In contrast to Finland, Portugal did not attend all the session of the Working Group; yet, it was a key player in bringing the issue of child soldiers on the agenda of the Security Council. In June 1998, Portugal, which held the Presidency of the Security Council, was the first state to invite the Special Representative for children in armed conflict to speak to members of the Security Council. A week after the Special Representative’s briefing, Security Council formally had the first UN debate on children in armed conflict. Portugal’s involvement on the issue of children in armed conflict and its support of the “straight-18” position was assisted by the launch of a reform plan for the Portuguese armed forces in the late 1990s. Indeed, in September 1999, a few months prior to the last session of the Working Group, Portugal adopted a law that provided for the transition to a fully professionalized army and established the minimum age for enlistment in voluntary service at 18 years. Upon its signature of the Protocol, Portugal declared that it would have preferred the Optional Protocol to exclude all types of recruitment of under-18s, voluntary or not, and stated that it would “apply its domestic legislation that prohibits the voluntary recruitment of persons under the age of 18 years.”<sup>91</sup>

The United Kingdom, as one of the states less willing to adopt the “straight-18” position, was targeted by the Coalition to Stop the Use of Child Soldiers. Strong pressure was exerted on the UK at the European Conference of the Coalition to Stop the Use of Child Soldiers convened in Berlin in October 1999. The UK was singled out for not only encouraging the recruitment of children under 18 in their armed forces, but also as the only EU states to routinely send under-18s to participate in hostilities. The UK government argued that its position on the question of allowing under-18 to be recruited is related to the shortage of recruits. In 1998, almost a third of annual intake of the military forces was constituted by under-18s.<sup>92</sup> During the crucial phase of negotiations of the Optional Protocol, the British

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<sup>90</sup> “Finland” in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, Coalition to Stop the Use of Child Soldiers, 2001, p.170.

<sup>91</sup> “Portugal”, *Declarations and Reservations to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, available at <http://www.unhchr.ch/html/menu2/6/crc/treaties/declare-opac.htm>, accessed 30/08/2007

<sup>92</sup> “United Kingdom” in Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers*, London, Coalition to Stop the Use of Child Soldiers, 2001, p.376

Ministry of Defence also defended its rights to deploy people under the age of 17 in cases to avoid destabilizing their units and thus undermining their effectiveness. The Ministry also reserved this right in cases of major international conflicts.<sup>93</sup> Yet, the British government continued to actively promote the ban of the use of child soldiers in various regions of the world. The British Department for International Development was especially committed to the issue. In March 1999, the International Development Secretary also announced that a portion of the British international aid budget would be allocated to support military reform in developing countries. Reducing the number of child soldiers would be a central aim of the initiative.<sup>94</sup>

Due to the opposition of the Ministry of Defence to renounce recruiting and allowing under-18s to participate in hostilities, the UK delegation in the Working Group could not easily offer to compromise on both issues. Nevertheless, it often reiterated that it would not block any consensus reached. While the UK signed the Optional Protocol on 7 September 2000, it also made a declaration that stated that the UK “will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities” but “understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: a) there is a genuine military need to deploy their unit or ship to an area where hostilities are taking place; and b) by reason of the nature and urgency of the situation: i) it is not practicable to withdraw such persons before deployment; or ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby interfere with the successful completion of the military mission and/or the safety of the personnel.”<sup>95</sup> NGOs and the Coalition to Stop the Use of Child Soldiers severely criticized this declaration that was considered as “contrary to the spirit and purpose of the Optional Protocol” and strongly campaigned for its removal.<sup>96</sup>

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<sup>93</sup> See R. Harvey, *Child Soldiers in the UK: Analysis of recruitment and deployment practices of under-18s and the CR*, Task Force on Children in armed conflict, Living Commentary, Children and Armed Conflicts Unit, Children’s Legal Centre, June 2002.

<sup>94</sup> See Coalition to Stop the Use of Child Soldiers, *Child Soldiers: CRC Country Briefs – United Kingdom*, London, Coalition to Stop the Use of Child Soldiers, 2002.

<sup>95</sup> See “United Kingdom of Great Britain and Northern Ireland”, *Declarations and Reservations to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, available at <http://www.unhchr.ch/html/menu2/6/crc/treaties/declare-opac.htm> accessed 01/09/2007

## 6.5 Conclusion

During the negotiations of the Optional Protocol, the EU struggled to deliver internal effectiveness. The EU never spoke with a single voice in the Working Group. Several EU Member States played an important role in achieving consensus on the issue, but the European Union was absent from the negotiations and failed to be effective. The EU was even held responsible for stalling negotiations in the Working Group. The issue of children in armed conflict did not become a priority for the European Union. In fact, several Member States that held the Presidency during the period of negotiations of the Working Group held more “conservative” position regarding the Optional Protocol. This partly explains why the European Union as an actor remained relatively absent from the negotiations.

The fact that negotiations addressed questions related to national armed forces made this issue particularly delicate in the EU. Debates at the domestic level on the reform of armed forces had a significant impact on several EU Member States’ position toward the Optional Protocol. Through the end of the 1990s, an important number of EU Member States were still recruiting under-18s. This constituted a considerable obstacle for the EU to achieve internal and external effectiveness. Nonetheless, EU Member States did achieve their objectives: the UN adopted an Optional Protocol on children in armed conflicts was adopted by the UN.

The development of a united and coherent EU approach to the issue of child soldier only began with the adoption of the EU Guidelines on Children in armed conflict in 2003, three years after the adoption of the Optional Protocol.<sup>97</sup> In fact, the Guidelines were followed by the adoption on 9 December 2004 of the first EU Plan of Action on children in armed conflict that aimed to promote better coordination of actions between Member States, the Council and the European Commission. However, the implementation phase of the Guidelines and of the Plan of Action is, to a great extent left, to the Member States.<sup>98</sup> The

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<sup>96</sup> See Coalition to Stop the Use of Child Soldiers, *op. cit*

<sup>97</sup> See I. Specht, L. Attree, Y. Kemper, “Children and Armed Conflicts: the Response of the EU” in UNIDIR, *Humanitarian Perspectives to Small Arms and Explosive Remnants of War*, Geneva: UNIDIR, 2005, pp.19-47.

<sup>98</sup> *Ibid.*, p.25.

Guidelines and the Plan of Action reflect that although there is support for the EU as an actor to be more pro-active in this area, Member States remain key players in this area. Ultimately, this may hinder the achievement of a comprehensive EU approach to the protection of children in armed conflicts.

## **Mining the Data: Is the EU effectively promoting “freedom from fear”?**

### ***7.1 Introduction***

This thesis seeks to answer the question: under what conditions is the EU an effective actor in the policy area of human security at the UN? It uses an “interactive approach”, which examines the interactions between three levels of negotiations, as an analytical framework to explore these conditions. Three case studies of human security negotiations were examined to test hypotheses regarding the relationship between the dependent variable – the EU’s internal and external effectiveness – and independent variables: the ban on anti-personnel landmines (APL), the illicit trade in small arms and light weapons (SALW), and the involvement of children in armed conflicts. This chapter offers a comparative analysis of the three case studies. This comparative perspective is essential to determine the conditions under which the EU is an effective actor at the UN in the field of human security.

Examining the EU as an actor in negotiations at the UN must be viewed as a “two-step” process. First, one must consider whether EU Member States act collectively and thus demonstrate that the European Union, and not just the Member States, is an actor in negotiations (internal effectiveness). Second, one must evaluate whether the European Union does, in fact, influence negotiations at the UN (external effectiveness). In order to investigate the EU’s effectiveness and the conditions under which the EU is an effective actor, one must consider these two dimensions of the process. This chapter aims to revisit each of hypotheses discussed in Chapter 3 and to conclude whether the hypotheses can be accepted or rejected.

This thesis hypothesized that the EU's effectiveness at the UN on human security issues would increase if:

At the international level (Level I) there was:

- Hypothesis 1: A high degree of EU's commitment to multilateralism.
- Hypothesis 2: A majority voting rule in negotiations
- Hypothesis 3: A positive US position

At the EU level (Level II) there was:

- Hypothesis 4: A high level of involvement on the part of the Presidency
- Hypothesis 5: A high level of participation of the European Commission
- Hypothesis 6: A high level of French, German and British support
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At the domestic level (Level III) there was:

- Hypothesis 7: A unified position in EU governments
- Hypothesis 8: Presence of influence of NGOs and international coalition of NGOs

## **7.2 Internal and External Effectiveness**

In assessing the EU's *effectiveness* at the UN in the promotion of human security, this thesis has defined effectiveness in two ways: internal effectiveness and external effectiveness. The EU was considered *internally effective* if the EU had a common position on (supported) a potential UN agreement regarding a specific human security issue. Not all EU Member States were required to support the agreement; however, if they did not block the European Union from supporting the agreement, the EU was deemed internally effective.

In this thesis, the external dimension of effectiveness referred to the success of the EU in achieving its objectives in the field of human security. All the initiatives supported by EU members in the area of human security have been towards the adoption of stricter regulations and constraining agreements. The EU was thus deemed *externally effective* if the outcome of the negotiations on a specific human security issue mirrored the EU's general objectives in the area of human security. The EU's external effectiveness was evaluated according to whether the UN achieved an agreement (that would introduce more stringent regulations) on a specific human security issue. If the UN failed to reach an agreement on a specific human

security issue, then the EU was also considered to have failed to achieve its objectives. This research project was based on the assumption that the EU's external effectiveness depends, to a considerable extent, on its internal effectiveness.

Was the EU internally effective in the three cases of human security negotiations examined? Can the EU be an effective actor and influence negotiations dealing with human security issues (thus CFSP issues)? The findings of the cases studies paint a mixed picture. The three cases investigated show a variation in the dependent variable: the EU's effectiveness (see Table 7.1)

*Internal effectiveness: does the European Union speak with one voice?*

To evaluate this aspect of effectiveness, statements or contributions delivered by the EU at the UN were examined in each phase of the negotiations. The first case study revealed that on the anti-personnel landmines issue, the EU struggled to be internally affective. During the first phase of negotiations in the Conference on Disarmament (CD), several EU Member States expressed their desire that the fight against anti-personnel landmines would remain a domestic issue. While there was limited EU output during the negotiations in the CD, there was still a willingness of EU Member States to work collectively and to support the adoption of a Joint Action that called for the strengthening of the Protocol II of the Convention on Conventional Weapons (CCW). EU Member States may have disagreed on which amendments should be included in the Protocol II, but they agreed that the EU should support international efforts to reinforce current regulations. Furthermore, following the results of the Review Conference and, despite not all EU Member States agreeing to support a comprehensive ban on anti-personnel landmines, the EU, as a collective actor, expressed its disappointment at the Review Conference's results.

In contrast, the beginning of the Ottawa Process saw the lowest point of collective action on the part of EU Member States. Not only were EU Member States divided over the Ottawa Process, but several EU Member States were opposed to the idea that the European Union should support the Process. Nonetheless, a majority of EU Member States decided to participate in the Process, whether as full participants or as observers. By the time of the last phase of negotiations of the ban treaty, almost all EU Member States had become full



participants in the Process. But the fact that two EU states were either reluctant to sign the treaty (Greece) or unwilling to sign a treaty they could not respect (Finland) prevented the EU from complete internally effectiveness. A few days before the signature of the Ottawa Convention, the European Union was unable to endorse the Ottawa Process or the international Convention that would prohibit the use, stockpiling, production, and transfer of anti-personnel mines. However, fourteen of the fifteen EU Member States signed the Ottawa Convention. Finland, the only EU Member States that did not sign the Convention, attended as an observer all the meetings of the Ottawa Process, although it did not support the Process. Finland remained inflexible in its opposition to a comprehensive ban if it was not globally accepted. Once Greece had joined other EU Member States in supporting the comprehensive ban, Finland was quite isolated within the EU. Furthermore, as it did support the idea of a *global* ban on anti-personnel landmines, it did not attempt to convince other EU Member States not to sign the Ottawa Convention. In this sense, the European Union achieved internal effectiveness: Finland did not block other EU Member States from signing the treaty or prevent the European Union from welcoming the signing of the Ottawa Convention.

In negotiations on the illicit trade in small arms and light weapons, the EU displayed internal effectiveness. In this case, as one interviewee pointed out “the EU did its homework”<sup>1</sup> and was able to adopt a common position on the issue. Early in the negotiations, the EU supported the conclusion of a legally binding agreement on the trade (including the illicit trade) in small arms and light weapons. EU Member States also agreed to work collectively through the EU to encourage this agreement. In contrast to the anti-personnel landmines case, the issue did not seek to ban the use or, in this case, the trade in these weapons. Negotiations in the small arms case focused on the best way to prevent and combat the illicit trade in small arms. Because the illegal proliferation of small arms is a complex issue, it became clear that the response of the international community would also need to be multifaceted. This allowed EU Member States to find a consensus on broader questions rather than on a single issue.

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<sup>1</sup> Interview with an official from an EU Member State Mission to the Conference on Disarmament, Geneva, 22 April 2008.

The EU's ability to work collectively was also aided because the EU Member States did not hold extreme positions on the issue of the illicit trade in small arms and light weapons. In a number of disarmament issues such as nuclear weapons and weapons of mass destruction (WMD), the scope for negotiation within the EU is quite limited: nuclear powers (such as France and the UK) have to negotiate with countries (such as Ireland and Sweden) that belong to the New Agenda Coalition, which lobbies for a total elimination of nuclear weapons. The small arms case became a good opportunity for the EU to show that it could be internally effective, even on a disarmament issue. One interviewee noted, "On small arms, you have got almost the reverse effect than on nuclear and WMD side[...] Some EU Member States let loose on the subject of small arms and the EU started taking on many other issues [related to small arms]."<sup>2</sup>

In the negotiations on the Optional Protocol on involvement of children in armed conflicts (OP-AC), however, the EU's internal effectiveness was quite limited. EU output on the question of children in armed conflicts was absent during the negotiations. The Optional Protocol dealt with rights of children, which until the Amsterdam Treaty were nonexistent in the EU's legal framework. Indeed, the first substantial EU document on children in armed conflicts was only adopted three years after the adoption of the Optional Protocol. The EU Member States did discuss the issues of children in armed conflicts, for negotiations on child labour in the International Labour Organization (ILO) and on war crimes in the International Criminal Court (ICC) both addressed the question of child soldiers. In both cases, the European Union was recognized as a strong advocate for the protection of children in armed conflicts. Nevertheless, one must emphasize that both Convention 182 of the ILO and the Rome Statute of the ICC refer, respectively, to children as under-16s and under-15s. Thus EU Member States found it less problematic to find a consensus on the ILO and Article 8 (2) of the Rome Statute than on the Optional Protocol where the "straight-18" principle dominated the discussion.

Contrary to the small arms case and, to a certain extent, to the anti-personnel landmines cases, the positions of Member States on the main questions discussed in the negotiations on the Optional Protocol were "extreme." It was evident from the beginning of the negotiations that the European Union would have to strive to be effective internally. The case of the

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<sup>2</sup> Interview with an official from an EU Member State Mission to the UN, New York, 20 June 2006

Optional Protocol appeared to be similar to other disarmament issues where the scope for negotiation within the EU is quite narrow. Thus, some of the strongest proponents for the straight-18 position within the EU, Sweden, Finland and Denmark, chose to concentrate their efforts on building consensus with other Nordic states as this was apparently more feasible than achieving consensus within the EU.

*External effectiveness: does the EU as an actor matter?*

The main focus of this thesis has been to assess the EU's role, or external effectiveness, in the success or failure of negotiations at the UN. However, this thesis has not sought to explore all the conditions that may explain why negotiations in the UN are successful or not. The EU may not be solely responsible for the adoption of an agreement at the UN: other factors or players may explain the success or failure of UN negotiations. The EU's external effectiveness is only one piece of the puzzle but may be an important piece.

In the case of anti-personnel landmines, the Review Conference did, ultimately, produce a revised Protocol II, but for the EU this document was not adequate. The fact that the revised Protocol II did not meet the EU's expectations does not mean that the EU failed to achieve its objectives. In fact, the adoption of an amended Protocol meant that UN members were successful in reaching an agreement that would introduce stricter regulations. Thus, in the case of negotiations on the review of the CCW, the EU was both internally and externally effective. While the Ottawa Process led to successful results, the EU had limited external effectiveness in the negotiations: the EU was too divided during the Process to be considered a cohesive actor with clear objectives. However, during the final two conferences of the Ottawa Process, when the EU Member States (except Finland) agreed to sign the mine ban treaty, the EU was able to show limited external effectiveness. Yet, the successful completion of negotiations in the landmines case was largely due to the work of EU Member States, rather than the result of the effectiveness of the European Union.

While EU Member States agreed that the proliferation of small arms needed to be controlled, EU Member States endorsed different approaches towards this problematic issue. This was particularly visible at 2006 Review Conference. The EU had a common position at the 2006 Review Conferences: Member States entered the 2006 Review Conference presenting a

united front and calling for the adoption of an outcome document that would strengthen the Programme of Action adopted in 2001. Yet, the EU also had twelve different priorities. This proliferation of objectives was a barrier to the EU's quest to be externally effective. First, the non-EU Member States were confused as to which of the twelve priorities were actually "priorities" and on which the EU would be less willing to compromise. Furthermore, the strong insistence on national priorities of certain EU Member States overshadowed the consensual priorities agreed by the EU Member States. The EU's internal effectiveness deteriorated during the 2006 Review Conference, which also led to a decline in its external effectiveness. The fact that no outcome document was adopted at the end of the Review Conference was considered by most EU Member States as a "failure." Even if the Review Conference produced "good discussion and good ideas were debated...no real progress was made."<sup>3</sup> The EU's inability to display external effectiveness, due to its crumbling internal effectiveness, was considered by many NGOs as a significant factor in the failure of the Review Conference.<sup>4</sup>

Whereas several Member States were intensely involved in the negotiation on the Optional Protocol, the EU did not become a significant player in discussion of the Working Group and was held responsible for the slow progress of the Working Group. Impasse on negotiations of recruitment issues was one of the reasons why the role of the European Union was deemed by some observers as one of the major limitations to the negotiation process.<sup>5</sup> An important number of Member States were still recruiting under-18s and had quite a strong position on maintaining the age of recruitment lower than 18. This constituted a considerable hurdle for the internal effectiveness of the EU and, thus, influenced its external effectiveness. Nonetheless, in accordance with the definition of "external effectiveness" used in this thesis, EU Member States did achieve their objectives: an Optional Protocol on children in armed conflicts was adopted by the UN. If EU Member States certainly played an important part in

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<sup>3</sup> Interview with an official from an EU Member State Mission to the UN, Geneva, 22 April 2008

<sup>4</sup> Interview with IANSA delegate, New York, 10 July 2006 and Interview with IANSA delegate, New York, 7 July 2006.

<sup>5</sup> See S. Cattaneo, '*New Multilateralism*' and '*High Politics*': *State-NGO Relations on Human Security Issues*. Thèse présentée à l'Université de Genève pour l'obtention du grade de Docteur en relations internationales (science politique), Institut des Hautes études internationales, Geneva, 2007, p.245.; and R. Brett, *Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict (OP/CAC)*, International Council on Human Rights Policy and International Commission of Jurists, Workshop, Geneva, 13-14 February 2005.

the genesis and the conclusion of negotiations on the Optional Protocol, the European Union as an actor was not a significant player in the successful completion of negotiations.

**Table 7.1 Internal and External Effectiveness**

Dependent Variable: Effectiveness	Cases						
	APL1	APL2	APL3	SALW1	SALW2	OP-AC1	OP-AC2
<b>Internal Effectiveness</b>	Yes	No	Yes	Yes	Yes	No	No
<b>External Effectiveness</b>	Yes	No	Yes	Yes	No	No	Yes

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

### ***7.3 EU Effectiveness and Independent Variables***

For each of the three levels of analysis, the thesis identified hypotheses on the conditions that may increase the EU's effectiveness. In total, eight hypotheses based on independent variables were identified. The expected relationship between the independent variables and the dependent variable were analyzed across the three cases. The next section aims to review each of the hypotheses discussed in Chapter 3 to determine whether they should be accepted or rejected.

### *Hypotheses at the international level (Level I)*

At the first level of analysis (Level I), three hypotheses were identified:

- Hypothesis 1: A high degree of EU's commitment to multilateralism increases the EU's effectiveness.
- Hypothesis 2: A majority voting rule in negotiations increases the EU's effectiveness.
- Hypothesis 3: A positive US position increases the EU's effectiveness.

Hypothesis 1: A high degree of EU's commitment to multilateralism increases the EU's effectiveness.

This thesis suggested that a high degree of EU's commitment to multilateralism at the international level would increase the EU's effectiveness. The EU's commitment to multilateralism as an abstract concept, qualitative indicators were used to assess the EU's commitment to multilateralism: direct contributions (statements, written contributions to the work of groups of experts, preparatory committees, etc.) of EU Member States and of the European Union to negotiations were evaluated. Three possible degrees of commitment were identified:

1. A *low* degree of EU's commitment meant that only EU Member States made contributions to the negotiations. In addition, the national contributions did not mention the European Union.
2. A *medium* degree of EU commitment involved contributions made on behalf of the EU by the rotating Presidency. EU Member States also had to mention the European Union in their national contributions.
3. A *high* degree of EU commitment meant that there were specific EU contributions that were submitted and that Member States referred to this contribution in their own national contributions.

In the case of APL, the European Union displayed a *medium* degree of contribution during the negotiations of the CCW Review Conference (see Table 7.2). This *medium* level was

manifested through the repeated declarations of the Member States that the EU wished the adoption of a strong revised Protocol II. While EU Member States agreed that the Protocol II should be reinforced, they were internally ineffective when negotiations started: the EU could not agree on which amendments should be adopted to strengthen Protocol II. There were no EU contributions to the Review Conference. The EU's level of contribution decreased during the Ottawa Process. The EU as an actor did not officially endorse the Ottawa Process or formally contribute to the Ottawa Process. The EU displayed a *low degree* of commitment during the Ottawa Process.

**Table 7.2. EU effectiveness and EU Commitment to Multilateralism**

Variables	Dependent Variable: Effectiveness: Internal (I) and External (E)													
	Cases													
	APL1		APL2		APL3		SALW1		SALW2		OPAC1		OP-AC2	
Independent Variable: Degree of EU Commitment	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Low Degree			No	No	Yes	Yes					No	No	No	Yes
Medium Degree	Yes	Yes												
High Degree							Yes	Yes	Yes	No				

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

In contrast, the EU demonstrated a *high* degree of commitment to multilateralism in the case of the illicit trade in small arms and light weapons. The European Union, and EU Member States, made several contributions to the work of the UN group of experts on small arms preparatory committees for both the 2001 Small Arms Conference and the 2006 Review Conference and to the Biennial Meeting of States on Small Arms. A high degree of commitment to multilateralism impacted on the EU's internal effectiveness and, to a certain extent, to its external effectiveness. The more the EU sought to contribute to the debate the more the EU Member States united to create an EU output. This was particularly evident during sessions of the preparatory committee for the 2001 Conference and the 2006 Review Conference.

Finally, the EU's contribution, in the case of the Optional Protocol on child soldiers, was limited to a *low* degree. In the child soldiers case, the European Union did not formally contribute to the debate. Formal contributions by the European Union only occurred after the UN General Assembly adopted the Optional Protocol. Interestingly, the EU Guidelines on children and armed conflict refer to several documents adopted by the EU, including the EU Code of Conduct on Arms Export adopted on 8 June 1998. However, the documents do not specifically address the question of the involvement of children in armed conflicts. The low degree of contribution (or rather the lack of contribution) on the part of the European Union is linked to the limited coordination between the Member States during the negotiations of the Working Group. Furthermore, the Working Group on the Optional Protocol met six times between 1995 and 2000. The EU Member States' participation to the Working Group was variable. While most of the participants in the Working Group were either from Europe and the Americas, with more than 35 European states represented in the negotiations, only eight (Austria, Denmark, Finland, France, Germany, the Netherlands, Sweden and the UK) of the fifteen EU Member States participated in all six sessions of the Working Group.

The research suggests that in all cases but one (APL2) a higher degree of commitment increases the EU's internal effectiveness. The results are not as conclusive for the EU's external effectiveness as in two cases (APL3 and OP-AC2); the EU displayed a *low* degree of commitment and was still externally effective. Furthermore, in the case of SALW2, the EU was highly committed to multilateralism, but was externally ineffective. Hypothesis 1 (a



high degree of commitment to multilateralism does increase the EU's effectiveness) is thus partially accepted.

Hypothesis 2: Negotiations based on majority voting increase the EU's effectiveness.

The rules of decision-making used in negotiations are the second variable selected at the international level. In our second hypothesis, a majority voting rule in negotiations increases the EU's effectiveness. A nominal category was used to measure this variable:

-*Consensus*

-*Majority voting*

All three cases involved at least one phase of negotiations which was based on *consensus*, the rule used in most UN regulations. Does the use of consensus appear to affect the EU's effectiveness? The research reveals that consensus does influence both internal and external effectiveness of the EU. In fact, in the cases of the Review Conference of the Protocol II on landmines, the 2001 Small Arms Conference and the 2006 Small Arms Review Conference, three conferences relying on consensus, EU Member States invested significant efforts to convince other states to support a final (weak) document, rather than encouraging more stringent commitments. More specifically, the use of consensus influenced the failure of the 2006 small arms Review Conference and the EU's lack of effectiveness in the negotiations. While the EU Member States focused on persuading the US to change its position, China and Russia, two main producers of small arms, used the consensus rule to maintain their positions on certain issues without attracting the attention of other states. The 2006 small arms Review Conference combined two elements, consensus rule and time constraints, which made it more difficult for the EU to exert external effectiveness.

The case of the Optional Protocol on child soldiers is interesting because in December 1999, the chairperson of the Working Group offered the option of voting to participants. However, this option was rejected for fear of creating a precedent in the (then) Commission on Human Rights. In the consensus-based negotiations, opponents of the straight-18 position had a clear advantage. Negotiations based on consensus made it more difficult for the EU to be

internally effective. The “reformist” EU Member States (which supported the “straight-18” position) in the EU had to convince their EU colleagues to support their position on the question without jeopardizing the adoption of the draft Optional Protocol. On this point, the case of Sweden is interesting: the Chairman of the Working Group was a Swedish national. While Sweden was a strong supporter of the straight-18 position, it could not advocate this position without undermining the efforts of the Chairman to achieve consensus and to conclude successful negotiations.

In each case studied in this thesis, achieving consensus was considered to be more important than adopting a more stringent treaty. Despite frequent criticism, working by consensus is considered a cornerstone of the United Nations system. There is evidence to show, that over and over again, EU Member States agreed to abandon their priorities for the sake of reaching consensus in the UN.<sup>6</sup> According to the definition of “external effectiveness” used in this thesis, supporting consensus becomes an important aspect of the EU Member States external effectiveness and support of the UN work. Yet, supporting consensus may also disrupt the EU’s internal effectiveness by encouraging EU Member States to privilege “consensus in the UN” over the EU “common position.”

Was the EU truly more internally and externally effective in the Ottawa Process, which was based on *majority voting*? Again, a cautious answer must be given to this question (see Table 7.3). The Core Group of the Ottawa Process also agreed that the majority voting rule would be used in negotiations. Only states willing to support the idea of a comprehensive ban were allowed to be full participants in the Process. The Core Group designed a process that increased the probability of achieving their preferred outcome. Ultimately, the Ottawa Convention was adopted without a vote, but the rules of procedures of negotiations were based on majority voting. Until the final phase of negotiations, the EU strove to be internally effective. The case study shows that majority voting allowed the more “reformist” EU Member States - Member States supporting the Ottawa Process - to lobby their EU colleagues to support the comprehensive ban without having to worry about the failure of negotiations (as this would have been the case in a consensus situation). The lobbying

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<sup>6</sup> This view was confirmed by a number of interviewees especially in an interview with an official from an EU Member State Mission, New York, 20 June 2006 and an interview with an official from an EU Member State Mission, Geneva, 22 April 2008.

proved crucial for the EU to achieve, to a certain extent, internal effectiveness during the final negotiations as 14 EU Member States signed the Ottawa Convention and Finland did not block attempts to reach consensus within the EU. Majority voting also influenced the EU's external effectiveness in negotiations.

Furthermore, in the last hour of negotiations, NGOs campaigners became concerned that intense American pressure would cause some EU Member States to change their position and to support the inclusion of exceptions in the treaty. EU Member States also used the majority rule to refuse compromise on the Ottawa Convention. In this sense, majority voting helped the EU to achieve limited external effectiveness.

**Table 7.3 EU Effectiveness and Decision-Making Rules**

Variables	Dependent Variable: Effectiveness: Internal (I) and External (E)													
	Cases													
	APL1		APL2		APL3		SALW1		SALW2		OP-AC1		OP-AC2	
Independent Variable: Decision-making rules	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Consensus	Yes	Yes	No	No			Yes	Yes	Yes	No	No	No	No	Yes
Majority Voting					Yes	Yes								

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

Only the case of anti-personnel landmines with the Ottawa Process included *majority voting*; however, this case confirms the hypothesis that majority voting does increase the EU's effectiveness. With only one case supporting the hypothesis that the EU's effectiveness increases with the use of majority voting, Hypothesis 2 can only be partially accepted, but the findings show that the EU does struggle, in some cases, to be internally and externally effective in negotiations based on consensus.

### Hypothesis 3: A positive US position increases the EU's effectiveness

The role of the European Union in the promotion of human security was considered especially crucial as the United States, a prominent UN actor and a major partner of the EU, appeared less committed to the human security agenda. As summarize in Table 7.4, all three case studies suggest that the US more often opposed than supported the agreement on the Table. Its lack of support for an international agreement on small arms and light weapons and its refusal to sign the Ottawa Convention has damaged the US reputation in the policy area of human security. However, its massive contribution to mine action programmes and the fact that it has adopted some of the strictest arms export laws and policies in the world make the US a crucial actor in human security issues.

With regards to the US position, the hypothesis formulated expected the following relationship: US support for an agreement would increase the EU's effectiveness. To determine whether the US supported or opposed an agreement, the statements delivered by the American delegation at the beginning and the end of each phase of negotiations was examined. The United States was only considered to be supporting the agreement if it was willing to endorse the version of the agreement that was currently under negotiation. A nominal classification was used to measure the US position:

*-The United States supports the agreement*

*-The United States opposes the agreement*

The *opposition* of United States partly explains why the EU struggled to show a united front with regard to the Ottawa Process and the first sessions of the Working Group on the Optional Protocol on child soldiers. In both cases, the United States' position in negotiations had an influence on EU Member States and precluded them from acting collectively. The first case examined is especially indicative of the influence of the US position and its ability to cause discord between EU Member States and affect their capacity to speak with a single voice. Although it did not sign the Ottawa Convention, the US was crucial player in the fight against landmines. The United States was the first country to adopt a moratorium on the export of anti-personnel landmines and, as early as 1996, pledged to lead global efforts to seek an agreement on a ban. However, the American initiative to favour the Conference on Disarmament over the Ottawa Process to achieve a comprehensive ban created division within EU and hindered efforts to achieve internal effectiveness.

The small arms case offers different findings. The fact that the US did not support international agreements of SALW did not have the same dividing effect on the EU Member States as in the landmines case. On the contrary, in key moments, the US opposition apparently encouraged the EU Member States to be more willing to work together and to promote the EU's priorities. This suggests that occasionally the US opposition can be a catalyst for the EU's internal effectiveness. However, US opposition in the small arms case was an important obstacle for the EU's achievement of external effectiveness.

But, as the third hypothesis suggests, does a positive US position increase the EU's effectiveness? The fact that the United States decided to join the Ottawa Process at Oslo and to *support* the mine ban treaty convinced some EU Member States to participate in the last phase of negotiations of the Ottawa Convention and also support the agreement. In addition, in the case of the Optional Protocol, the shift in the American position in the last session of the Working Group produced similar results. These findings suggest that a positive position of the US can increase the EU's effectiveness, but mostly its external effectiveness.

**Table 7.4 EU Effectiveness and US position**

Variables	Dependent Variable: Effectiveness: Internal (I) and External (E)													
	Cases													
	APL1		APL2		APL3		SALW1		SALW2		OP-AC1		OP-AC2	
Independent Variable: US position	I	E	I	E	I	E	I	E	I	E	I	E	I	E
US supports					Yes	Yes*							No	Yes
US opposes	Yes	Yes	No	No			Yes	Yes	Yes	No	No	No		

\*US supported until the very end of negotiations but did not sign the agreement.

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

It is important to observe two other results of the case studies that relate to the role of the US and the EU's effectiveness in human negotiations. First, the cases reveal that the United States' "special relationship" with the United Kingdom can impact negotiations at the international level, but also influence the effectiveness of the EU (on the UK influence on effectiveness see *Hypothesis 5* below). In both the anti-personnel landmines and, more importantly, in the Optional Protocol cases, the fact that both the US and the UK opposed the agreement on the Table was a significant impediment to the successful completion of negotiations.

Second, although the United States is an important actor in the UN, it is not the only actor. The case studies reveal that other actors, including several members of the G-77<sup>7</sup>, had an impact on the EU Member States achieving their objectives and should also be considered. For example, the small arms case suggests that the EU's focus on convincing the United States meant that it did not spend enough time lobbying several African and Asian states, two of the most affected regions by the scourge of small arms and light weapons. In the end, some African and Asian countries blocked EU proposals. In the case of the Optional Protocol on child soldiers, the need to address the problems of child soldiering in developing countries became a central issue during negotiations. Yet, most of the negotiations only involved developed states. For example, approximately twelve sub-Saharan African States participated in negotiations of the Working Group, but not one state was represented in the sessions.<sup>8</sup> EU Member States defending the straight-18 position might have exerted more influence on African countries, which could have potentially been allies. The lack of allies became problematic for several EU Member States and hindered the EU's external effectiveness.

The case studies indicate that the US position does have an effect on the EU's effectiveness, but the increase of the EU's effectiveness is not necessarily linked to a positive US position. In fact, occasionally, the US opposition actually encouraged EU Member States to work collectively. The case studies do show evidence that US support for an agreement facilitated the achievement of the EU's objectives. Thus, the hypothesis that a positive US position increases the EU's effectiveness can only be partially accepted.

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<sup>7</sup> The Group of 77 (G-77) was established on 15 June 1964 by seventy-seven developing countries. It now includes more 130 countries and is the largest intergovernmental organization of developing states in the United Nations. The aim of G-77 is to "provides the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development." See [www.g77.org](http://www.g77.org).

<sup>8</sup> Happold argues that the sporadic attendance of African states is probably due to budgetary constraints rather than a lack of interests. See M. Happold, "The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts" in H. Fischer and A. Macdonald (eds.), *Yearbook of International Humanitarian Law*, vol.3, The Hague: T.M.C. Asser Press, 2000, p.231.

### *Hypotheses at the EU level (Level II)*

The second set of hypotheses was formulated to examine the relationship between the dependent variable and independent variables at the EU level. The hypotheses were designed to explore the influence of main actors in EU external relations on the EU's effectiveness. These actors included the Presidency, the Commission, and France, Germany and the United Kingdom.

Three hypotheses were formulated:

- Hypothesis 4: A high level of involvement on the part of the Presidency increases the EU's effectiveness.
- Hypothesis 5: A high level of participation of the European Commission increases the EU's effectiveness.
- Hypothesis 6: A high level of French, German and British support increases the EU's effectiveness.

Hypothesis 4: A high level of involvement of the Presidency increases the EU's effectiveness.

The first hypothesis at the EU level relates to the role of the Council Presidency. The hypothesis suggested that a high level of involvement of EU Presidencies increased the EU's effectiveness. The involvement of the Presidencies was measured using the following ordinal scale:

1. *Low level of Involvement of the Presidency:* Adoption of Statements, Declarations, Conclusions (politically binding CFSP instrument)
2. *Medium Level of Involvement of the Presidency:* Adoption of Joint Actions and Common positions
3. *High Level of Involvement of the Presidency:* Adoption of EU strategy which requires the adoption of Joint Actions and Common positions.



As summarize in Table 7.5 and Table 7.6, the level of involvement of the EU Members States holding the Presidency varied across the three cases.

**Table 7.5. CFSP Instruments Adopted**

CFSP Instruments Adopted	Cases						
	APL1	APL2	APL3	SALW1	SALW2	OP-AC1	OP-AC2
<b>Statements, Declaration, Conclusions</b>	1	1		4		1	1
<b>Joint Actions, Common Positions</b>	1		2	3	2		
<b>EU Strategy</b>					1		

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

In the anti-personnel landmine case, the level of involvement of the EU Presidencies was *low* for the first two phases of negotiations and *medium* for the last phase of negotiations. Interestingly, the low level of involvement coincided with Presidencies held by states that were not only pro-ban, but also pro-Ottawa Process. It is evident that EU Member States holding the Presidency during the Ottawa Process (Ireland, the Netherlands and Luxembourg) played an important role in ensuring the continued attention to the issue of landmines within the EU. If Greece or Finland had held the Presidency during this period, negotiations might have taken another turn. Nonetheless, in cases where the positions of EU Member States are more “extreme” on a certain question and the position of the Presidency is more “reformist,” the more likely the Presidency will encounter difficulty in achieving consensus within the EU.

**Table 7.6 EU Effectiveness and Involvement of Presidency**

Variables	Dependent Variable: Effectiveness: Internal (I) and External (E)													
	Cases													
	APL1		APL2		APL3		SALW1		SALW2		OP-AC1		OP-AC2	
Independent Variable: Level of Involvement Of Presidency	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Low Level			No	No							No	No	No	Yes
Medium Level	Yes	Yes			Yes	Yes	Yes	Yes						
High Level									Yes	No				

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

A *high* level of involvement of the Presidency was observed in the case of small arms and light weapons where the EU was especially internally effective. Several Member States holding the Presidency convinced their EU partners of the need to address the SALW issue and helped to harmonize the EU's position regarding the illicit trade of small arms and light weapons. This had a direct impact on the EU's internal effectiveness. Between 1997 and 2006, the EU adopted more than a dozen agreements addressing the issue of small arms,

including a series of Joint Actions, an EU Code of Conduct, an EU Plan of Action and the EU Strategy. Between the 2001 Small Arms Conference and the 2006 Review Conference, the EU's position progressed. More importantly, it was reinforced by the adoption of CFSP instruments.<sup>9</sup> These developments contributed to the perception that the European Union was as a significant actor with high expectations, particularly at the commencement of the 2006 Review Conference. Curtailing the spread of small arms and light weapons was an important priority on the disarmament agenda for the EU countries which held the Presidency either just prior to or during the negotiations on small arms. The case of small arms and light weapons confirms the hypotheses that a high level of involvement of the Presidency augments the EU's effectiveness, particularly its internal effectiveness.

A *low* level of involvement of the Presidency is found in the case of the Optional Protocol on the involvement of children in armed conflicts. In this case, the EU's position was divided, as some EU Member States refused to compromise. The fact that several "conservative" Member States held the Presidency during the negotiations of the Working Group provides the explanation for why the European Union remained relatively silent on the issue. This, however, may also reflect the fact that one of the most important tasks of the Council Presidency is to reach consensus on an issue. One interviewee pointed out that in Geneva, when there is a clear divide between the positions of the Member States on a specific human rights issue, the EU does even attempt to reach consensus.<sup>10</sup> The Optional Protocol was such an issue.

While some interviewees noted that holding the Presidency does permit EU Member States to place more of their priorities on the EU agenda and to advocate their views,<sup>11</sup> most stressed that it would be a very sensitive issue for an EU Member State to push for their own position to be adopted as an EU position.<sup>12</sup> The Presidency's role is, first and foremost, to find consensus within EU. Any attempt of one Presidency to advocate excessively their

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<sup>9</sup> Interview with an official from UK Mission to the United Nations, New York, 20 June 2006

<sup>10</sup> Interview with an official from a Mission of an EU Member States to the UN, Geneva, 22 April 2006

<sup>11</sup> Interview with an official from a Mission of an EU Member States to the UN, New York, 21 June 2006, Interview with an official from a Mission of an EU Member States to the UN, Geneva, 22 April 2008.

priorities could potentially jeopardize its position as chair of EU Meetings. “Reformist” states may even prefer not to have the presidency as this would enable them to lobby their EU colleagues more intensively. Regarding the 2006 Review Conference, one interviewee noted that Germany was most likely relieved not to be holding the Presidency of the EU because their views on ammunitions were controversial.<sup>13</sup> Holding the Presidency would have prevented Germany from intensively lobbying other states for an agreement on this issue.

Another revelation that emerges from the case studies is that while discussion in the Council Working Groups, whether CONUN, CODUN, COARM or COHOM, set the priorities and objectives, negotiations on the specifics occur in New York and Geneva. For example, the adoption of the EU Strategy under the UK Presidency was an important guiding document for the elaboration of the EU’s position for the 2006 Small Arms Review Conference, but the actual EU position for the Review Conference was negotiated between the capitals and the missions in New York and Geneva. Furthermore, while officials working in New York and Geneva recognized the authority of the Council of Ministers, they argue that often the documents adopted in Brussels do not reflect the reality of negotiations in New York and Geneva.<sup>14</sup> However, the officials also contend that the Presidency’s role remains significant, especially when setting objectives for the EU regarding issues on the UN agenda and achieving consensus within the EU.

The case studies confirm that a higher level of involvement of the Presidency increases the EU’s effectiveness, particularly its internal effectiveness. *Hypothesis 4* is thus accepted.

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<sup>12</sup> Interview with an official from a Mission of an EU Member States to the UN, Geneva, 22 April 2008., Interview with an official from a Mission of an EU Member States to the UN, New York, 20 June 2006, 20 June 2006

<sup>13</sup> Interview with an official from a Mission of an EU Member States to the UN, New York, 20 June 2006,

<sup>14</sup> Interview with an official from a Mission of an EU Member States to the UN, New York, 20 June 2006, and Interview with an official from a Mission of an EU Member States to the UN, Geneva, 22 April 2008.

Hypothesis 5: A high level of participation of the European Commission increases the EU's effectiveness

The second hypothesis at the EU level suggested that a high degree of participation of the Commission would increase the EU's effectiveness. The participation of the European Commission was measured using this ordinal scale:

1. *Low level of participation:* Statements by EU Commissioners.
2. *Medium Level of participation:* Statements by EU Commissioners and Adoption of Communication from the Commission (COM documents).
3. *High Level of participation:* Statements by EU Commissioners, adoption of COM documents and cooperation with the Presidency (production of material/reports for the UN conferences, organization of international events).

Each of the three cases suggests that the actual role of the Commission at the UN in human security negotiations is often limited to participating in EU coordination meetings and organizing side-events. The Commission officials are usually invited to UN meetings dealing with human security issues, but are not allowed to participate in negotiations.<sup>15</sup> Nonetheless, the European Commission is seen as an important interlocutor by non-EU Member States: the Commission may help partners to better understand the position of EU Member States regarding certain human security issues.<sup>16</sup>

Through the Ottawa Process, the European Union was viewed as a central player in the fight against landmines. Yet, this was, to a certain extent, due to the role of the European Commission in this field. Despite the EU Member States' division over the adoption of a comprehensive ban, the European Commission continued to work closely with the UN and fund mine-related activities. In fact, by the early 1990s, the European Commission was already a major donor for mine-related programmes and ECHO had developed a strong partnership with the ICRC for mine clearance projects. In the EU, anti-personnel landmines were first portrayed as human rights issues (as in the European Parliament Resolution), but

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<sup>15</sup> Interview with an official from the European Commission, DG Relex, Brussels, 17 October 2007.

<sup>16</sup> Interview with an official from the European Commission, DG Relex, Brussels, 15 October 2007 and Interview with an official from the Permanent Mission of Canada to the UN, New York, 15 June 2006.

also as humanitarian and development issues. However, for the Member States, the military aspect of APL eclipsed all other dimensions of the questions: APL were first and foremost a CFSP issue. While the European Commission's activities made it a central actor in the fight against APL, the level of involvement of the European Commission remained *low* (see Table 7.7). The Commission did not become a key player in negotiations of the Ottawa Process. Although the Commission was welcomed to attend the Council meetings where the APL was discussed, it was not directly involved in the development of the EU's APL policy. The fact that the ICBL did not generally target the European Commission is another indication of the secondary role of this institution during the Ottawa Process. The European Commission's involvement on anti-personnel landmines had little impact on the EU's effectiveness in negotiations on the mine ban treaty.

In the small arms case, the level of participation of the European Commission was *high*. First, the European Commission worked in a close partnership with some of the Council Presidencies. The EU Strategy on Small Arms also acknowledged the role of the European Commission. As with APL, the production and trade of small arms do not fall into the competence of the Commission as they are considered CFSP issues. However, the Commission is responsible for the European Community actions in the field of humanitarian and development assistance, which are intrinsic parts of the efforts against the proliferation of small arms. Following the 2001 Small Arms Conference, the Commission became increasingly active in several SALW-related programs using different lines of budget and programs, such as the European Initiative for Democracy and Human Rights (EIDHR) and the European Development Fund (EDF). The European Commission also developed specific initiatives to increase its visibility in the field of small arms. It commissioned a wide-ranging research project to study consistency problems of the EU SALW policy. The aim of the report was to offer suggestions on how the European Union could become more effective in this field. The report also proposed specific initiatives that the Commission was to implement. With this project the European Commission signalled its intention to play a greater role in the issue of small arms and light weapons. The EU Member States acknowledge the Commission role in negotiations and its contribution is found especially

useful in providing “facts and figures.”<sup>17</sup> However, the Commission has yet to influence negotiations at the UN on this specific issue.

**Table 7.7 EU Effectiveness and Participation of European Commission**

Variables	Dependent Variable: Effectiveness: Internal (I) and External (E)													
	Cases													
	APL1		APL2		APL3		SALW1		SALW2		OP-AC1		OP-AC2	
Independent Variable: Level of Participation of European Commission	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Low Level	Yes	Yes	No	No	Yes	Yes								
Medium Level											No	No	No	Yes
High Level							Yes	Yes	Yes	No				

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

In the final case, the European Commission was mostly involved with the UN Special Representative for children and armed conflicts and displayed a *medium* level of participation. At the time of the last sessions of the Working Group on the Optional Protocol, regular consultations were organized between the Special Representative and the

<sup>17</sup> Interview with an official from a Mission of an EU Member States to the UN, New York, 20 June 2006, and Interview with an official from a Mission of an EU Member States to the UN, Geneva, 22

Commissioner for Humanitarian Affairs and Development. The Commissioner also collaborated closely with the Coalition to Stop the Use of Child Soldiers and endorsed the Coalition's campaign. Yet again, the European Commission did not participate in the negotiations of the Working Group on the Optional Protocol and had little impact on the EU's effectiveness in negotiations on the Protocol. There are several explanations for this. First, the Optional Protocol was to be annexed to a human rights treaty and the implementation of the EU's external human rights policy through international organizations such as the UN is a CFSP issue. Second, the Optional Protocol dealt with the rights of children, but also had a military dimension. As with the cases of APL and SALW, the military character of the question was omnipresent in negotiations of the Working Group. Thus, the European Commission could contribute little to the debate and did not become a significant actor in the negotiations.

Based on the findings of all three cases, the Commission's level of participation does not affect the EU's effectiveness at the UN in human security negotiations. Thus, the hypothesis that a high level of participation of the European Commission increases the EU's effectiveness is rejected.

#### Hypothesis 6: High level of French, German and British support increases the EU's effectiveness

The hypothesis that a high level of French, German and British support increases the EU's effectiveness was the third and last put forward for the EU level. An ordinal classification was used to examine this variable:

1. *Low Level of Support*: France or Germany or the United Kingdom champions EU initiatives that support UN agreement on human security issues, and supports the potential UN agreement without any reservations.
2. *Medium Level of Support*: Two of these states (France-Germany or France-UK or Germany-UK) champion EU initiatives that support UN agreement on human security issues, and support the potential UN agreement without any reservations.



3. *High Level of Support:* France, Germany and the UK champion EU initiatives that support UN agreement on human security issues, and all three states support the potential UN agreement without any reservations.

As Table 7.8 summarizes, a *high* level of support of France, Germany and the UK affected the EU's effectiveness in all three cases. This is particularly true regarding negotiations dealing with conventional weapons such as landmines and small arms. The position of these three countries influenced the position of other (smaller) EU Member States. Once France, Germany and the UK support an initiative on conventional weapons, other smaller EU states are generally quite content to follow.<sup>18</sup> The Big Three also influence each other's positions. In general, all three states wished to be united: none of these three states desires "to stand alone" in negotiations. One interviewee pointed out that "90% of the time, [France, Germany and the UK] agree on issues that are discussed at the UN."<sup>19</sup> This statement is also representative of the three case studies examined in this thesis. The case studies confirmed that France, Germany and the United Kingdom were dominant players at the international level in human security negotiations. Their support for or opposition to an agreement in the field of human security were influential in getting other EU Member States on board but also for the successful completion of negotiations at the international level.

In the anti-personnel landmine case, Germany's early support for the Ottawa Process was judged crucial, as most other states in the Core Group were small states or middle powers. However, Germany was also attracted by the dual-track approach and was seen by both camps (pro-CD and pro-Ottawa Process) as an ally. Germany was therefore, unable to influence the EU's support for one position over the other. The shift in the British and French position did clearly have an impact on other EU member states. This case study revealed that once the UK and France had joined the Ottawa Process in June 1997, other EU member states that had been more pro-CD quickly followed and shifted their position; by the Oslo Conference, all EU member states except Greece and Finland fully participated to the negotiations. The internal effectiveness of the EU increased significantly after 1997. The fact that the British, French and German governments supported the Ottawa Process was interpreted as a signal by other states that a comprehensive ban could be achieved. The APL

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<sup>18</sup> Interview with an official from EU Member States Mission to the Conference on Disarmament, Geneva, 22 April 2008.

case supports the hypothesis that a high level of support of France, Germany and the UK increases the EU's effectiveness.

**Table 7.8 EU Effectiveness and French, German and British Support**

Variables	Dependent Variable: Effectiveness: Internal (I) and External (E)													
	Cases													
	APL1		APL2		APL3		SALW1		SALW2		OP-AC1		OP-AC2	
Independent Variable: Level of Support of France (F), Germany (G), United Kingdom(UK)	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Low Level			No G	No G										
Medium Level											No F,G	No F,G	No F,G	Yes F,G
High Level	Yes	Yes			Yes	Yes	Yes	Yes	Yes	No				

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

France, Germany and especially the UK were also unquestionably important actors in small arms negotiations. These states were supportive from the beginning of the negotiations, were

<sup>19</sup> Interview with official from UK Mission to the UN, New York, 8 June 2006.

actively involved, and supported EU actions in this sphere. However when these three Member States decided to pursue their own priorities rather than the EU position, the EU's effectiveness deteriorated. In fact, not only the UK, but also France and Germany were criticized by other EU Member States during the 2006 Review Conference because they made several proposals and suggestions to the President of the Conference without consulting their EU partners. This resulted in a situation where these EU Member States adopted stronger positions, rather than allowing the more moderate EU statements to represent them.

It is also important to note that the UK's distinctive rapport with US has led some observers and EU Member States to question the leadership of the UK on issues such as the illicit trade of small arms and light weapons.<sup>20</sup> This special relationship, however, can also be beneficial for the EU and, in some cases, increase the EU's external effectiveness. The UK is recognized by its EU partners as "a bridge between the EU and US."<sup>21</sup> EU Member States often look to the UK for help when negotiating with the United States and ensuring the US participates in negotiations and supports agreements on human security issues.<sup>22</sup> The UK's relationship with the United States may thus help EU Member States and the European Union achieve their objectives. Yet, in the case of small arms and light weapons, the UK failed to convince the US to support the agreement.

The case study on the Optional Protocol on child soldiers revealed that France and Germany were both actively involved in negotiations of the Working Group and generally in favour of a strict Optional Protocol on the issue of recruitment and participation. Nonetheless, these two countries preferred to achieve a protocol by consensus, rather than seeking a "straight-18" outcome. This position was adopted by most other EU Member States, including the United Kingdom, but not by those supporting the "straight-18" principle. The French and Germans struggled to convince the more "reformist" states to drop the principle. The EU was unable to be entirely internally effective during the negotiations. The UK position on the age for participation and recruitment also contributed to this situation. Not only did the UK cause negotiations in the Working Group to linger, but its inflexibility directly hindered the EU

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<sup>20</sup> Interview, with IANSA delegate, New York, 6 July 2006.

<sup>21</sup> Interview with an official from a Mission of an EU Member States, 22 April 2006.

<sup>22</sup> Interview with an official from UK Mission to the United Nations, New York, 8 June 2006 and Interview with an official from UK Mission to the United Nations, Geneva, 22 April 2008.

ability to speak with one voice and influence negotiations. One interviewee described the UK's involvement as follows: "Great-Britain will never be against initiatives on child soldiers but it is less active on the issue than other EU Member States and has very limited leadership"<sup>23</sup>. The UK was a hesitant actor in the negotiations on the Optional Protocol: during the negotiations, the UK reiterated that it was willing to compromise and would not block consensus on the Optional Protocol. However, its position on many issues exasperated many of the other states. In the case of the Optional Protocol, the position of the UK, rather than the position of France and Germany, had a significant influence on the EU's effectiveness.

Evidence from the three case studies confirms that a higher level of French, German and British support does increase the EU's effectiveness. *Hypothesis 5* is accepted.

#### *Hypotheses at the Domestic Level (Level III)*

In a three-level game analysis, the third level of analysis focuses on examining domestic politics. A comprehensive three-level analysis of negotiations involving the EU would require the review of national politics in 27 Member States. To limit the scope of and simplify the analysis of case studies, this thesis focused on domestic politics in France, Germany and the UK, and, when relevant to the analysis, EU Member States holding the Presidency. To simplify the analysis, all EU Member States holding the Presidency are represented by one category "The Presidency". Two hypotheses were formulated at the domestic level. The first hypothesis concerned the relationship between the cohesive position of national governments and the EU's effectiveness. The second hypothesis involved testing the relationship between the activities of NGOs in EU Member States and the EU's effectiveness.

Hypotheses 7: A unified position of various national departments/ministries in EU Member States increases the EU's effectiveness.

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<sup>23</sup> Interview with an official from the Permanent Mission of Canada to the UN, New York, 15 June 2006.

The first hypothesis at the domestic level stipulated that the presence of a common position within EU Member States increases the EU's effectiveness. This variable was assessed using a nominal classification:

*-Presence of a unified position in EU governments*

*-Absence of a unified position in EU governments*

The three case studies have demonstrated that in addition to officials from the national foreign ministries, other ministries/departments are involved in human security negotiations. These departments may have their programmes and policies directly affected by agreements on human security issues. At the domestic level, the ministries of defence tend to be the ones to "lose out" when stricter standards and norms are adopted in the field of human security. In each investigated case, the ministries of defence became vocal players in the negotiations (see Table 7.9).

The *absence* of a unified position in some EU governments had a critical impact on the EU's effectiveness in the case of anti-personnel landmines. Internal disagreements had several effects on negotiations both at the domestic level and the international level. First, at the domestic level, the case shows that solving internal disputes requires time and energy: EU governments had to conduct studies to convince the ministries/departments that would be potentially disadvantaged that the agreement would enhance the security of states and individuals. Internal disputes also create a situation where negotiators arrive at the negotiating Table with "tied hands"<sup>24</sup> and with less flexibility to compromise with their partners at the international level. Furthermore, the case study also indicates that the absence of a consensual position within a government can create confusion at the international level with regards to the position of the government on the agreement. Declarations and initiatives made by one department in support of the agreement can be swiftly neutralized by the opposition or even, in some cases, the silence of another department.

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<sup>24</sup> On the consequences of having "tied hands" for negotiators, see P.B. Evans, "Building an Integrative Approach to International and Domestic Politics", in " in P.B Evans et al. (eds.), *Double-*

**Table 7.9 EU Effectiveness and Unified Position within EU Governments**

Variables		Dependent Variable: Effectiveness: Internal (I) and External (E)													
		Cases													
		APL1		APL2		APL3		SALW1		SALW2		OP-AC1		OP-AC2	
Independent Variable: Unified Position within EU Governments		I	E	I	E	I	E	I	E	I	E	I	E	I	E
Presence of unified position in France, Germany, UK and Presidency	F	Yes	Yes			Yes	Yes	Yes	Yes	Yes	No			No	Yes
	G	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No			No	Yes
	UK					Yes	Yes	Yes	Yes	Yes	No				
	P	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No				
Absence of unified position in France, Germany, UK and Presidency	F			No	No							No	No		
	G											No	No		
	UK	Yes	Yes	No	No							No	No	No	Yes
	P											No	No	No	Yes

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

In some EU Member States, including France and the UK and also EU Presidencies such as Belgium, the support or opposition of the Ministry of Defence for a comprehensive ban on anti-personnel landmines apparently played a key role in negotiations. The case study revealed that EU Member States struggled to be considered serious campaigners for a comprehensive ban until their ministry of defence openly supported this option. This situation prevented some Member States from giving support to the Ottawa Process, but also

to lobby for a comprehensive ban at the EU level. Thus, the *absence* of a common position within a government negatively influenced the EU's internal effectiveness. In contrast, countries such as Germany, where the various ministries and departments involved in negotiations on landmines collectively supported a total ban, were able to actively advocate for a comprehensive ban and to give their full support to the Ottawa Process.

The positive effect of the presence of a *unified* position in EU Member States government on the EU's effectiveness was evident in the small arms case. In nearly all EU countries there was not a clear division on the SALW issues among the various departments/ministries. Certain EU Member States created internal initiatives to coordinate the position of various ministries and as well as existing SALW programmes managed by the ministry of foreign affairs, the ministry of defence and the ministry responsible for development aid. The UK was particularly successful in this domain. One interviewee emphasized that in the case of small arms, the UK is in a better position to influence negotiations as its ministries do not compete. The interviewees stressed that the UK does witness in other EU Member States rival discussions that involve the ministry of foreign affairs and the ministry of defence and added "this doesn't tend to happen with us. It's easier for us, because there is a mechanism which has ministerial support."<sup>25</sup> Having a unified government position can give an advantage to an EU Member State as it is able to adopt a stronger position in negotiations and without considering the consequence on intragovernmental bargaining. A unified government position increases the ability of an EU Member State to efficiently lobby its EU partners as well as other states in negotiations and thus, can affect the EU's internal and external effectiveness.

Most ministries of defence in the EU regarded the Optional Protocol as a treaty that could have potential negative and disruptive effects on their armed forces. It was clear that the position on the Optional Protocol of the Ministries of Defence were heavily weighed in the decision process. In the 1990s, military reforms were introduced in several EU Member States. These reforms had diverse consequences. In some countries, the age for recruitment and participation was raised and thus allowed some national governments to actively lobby for a strong Optional Protocol. However, in a significant number of EU Member States,

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California Press, 1993, pp.402-403

<sup>25</sup> Interview with an official from the UK Mission to the UN, New York, 20 June 2006.

armed forces gradually became all-volunteer forces. The move to a professional army was regularly invoked by the ministries of defence as the reason why they could not support the “straight-18” position. This caused complications for a few EU Member States, including the Netherlands and the UK, where the Ministry of Defence was defending its right to recruit under-18s, while the Ministry responsible for development assistance was reaffirming its commitment to contribute to UN efforts to reduce the number of children involved in armed conflicts. Without a unified governmental position on the issue of the involvement of under-18s in armed conflicts, a number EU government were unable to support a “reformist” agenda and find a consensus with other EU partners. The absence of a common position in these states affected the EU’s internal effectiveness.

The cases of anti-personnel landmines and the Optional Protocol on child soldiers confirm that internal bargaining can be a significant challenge to a state when adopting a strong position in negotiations and for an EU Member State to reach consensus with its EU partners. *Hypothesis 7*, the presence of a unified position in EU governments increases the EU’s effectiveness, is accepted.

**Hypothesis 8: The Presence of Influence of NGO/Coalitions of NGOs in EU Member States increases the EU’s effectiveness.**

The final hypothesis suggested in this thesis is that the presence of influence of NGOs/Coalitions of NGOs increases the EU’s effectiveness. This variable was measured using the following nominal classification:

*-Absence of Influence:* there is no or limited evidence that NGOs/Coalition of NGOs used one of the influence mechanisms (mass electoral pressure or shifting elite coalition or bureaucratic utilization).

*-Presence of Influence:* NGOs/ Coalitions of NGOs used at least of one the three of the influence mechanisms (mass electoral pressure, shifting elite coalition, bureaucratic utilization).

Electoral pressure occurs when growing activism and mobilization of public opinion produce electoral incentives for action. The second mechanism, elite coalition-shift, involves NGOs



becoming part of the dynamics of elite coalition formation: coalition of like-minded elites will instigate action on the issue or ask a government to shift its policy. Lastly officials within the policy-making system can gain an advantage in debates with other actors in the government through bureaucratic utilization, or the use of arguments that the NGOs provide.

The case studies only provide partial evidence of the actual influence of NGOs and NGOs coalition within the EU. It is important to stress that an *absence of influence* does not suggest that NGOs were not active in the European Union. It only indicates that there is little or no evidence of the use by NGOs of at least one of the three influence mechanisms in France, Germany and the UK and the Presidency. Again, to simplify the analysis, all EU Member States holding the Council Presidency are represented by the category “Presidency”. If there is evidence of NGOs using at least one of the influence mechanisms in one of the EU Member States that was holding the Presidency, then it was concluded that there was evidence of *presence of influence* on the Presidency.

There is clear evidence of the *presence* of influence of NGOs across all three cases (see Table 7.10). However, some EU Member States were targeted more than others. This is the case with France, Germany and the United Kingdom. In these countries, NGOs appear to have been particularly active when a shift in the government policy was desired.

The role of the International Campaign to Ban Landmines (ICBL) and the pressure of public opinion on governments to change their landmines policy had an effect on the negotiations of the Ottawa Convention. The case studies indicate that throughout negotiations in the Conference on Disarmament and the Ottawa Process, NGOs and the International Campaign to Ban Landmines used all the three influence mechanisms in various EU Member States. The ICBL was particularly active in France and the United Kingdom. In both countries, the ICBL coalition used the mechanisms of electoral pressure and bureaucratic utilization. The latter mechanism was used by NGOs due to the fact that ministries in the French and British governments were divided regarding a total ban on landmines. In contrast in Germany, NGOs focused their efforts on shifting elite coalition and encouraging the German government to promote the ban at the international level. It is interesting to note that in some states holding the Presidency, such as Ireland, Belgium and the Netherlands, the presence of influence of NGOs is mostly related to NGOs using the mechanism of shifting

elite coalition and encouraging Member States to act internationally on the issue. In the landmine case, NGOs influenced the EU achieving both internal and external effectiveness.

**Table 7.10 EU Effectiveness and Influence of NGOs/Coalition of NGOs**

Variables		Dependent Variable: Effectiveness: Internal (I) and External (E)													
		Cases													
		APL1		APL2		APL3		SALW1		SALW2		OP-AC1		OP-AC2	
Independent Variable: Influence of NGOs/Coalitions of NGOs		I	E	I	E	I	E	I	E	I	E	I	E	I	E
	Presence of NGO														
	influence														
	In France,														
	Germany, UK, and Presidency														
	F	Yes	Yes	No	No	Yes	Yes								
	G	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes
	UK	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes
	P	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No				
Absence of NGO influence in France, Germany, UK, and Presidency	F							Yes	Yes	Yes	No	No	No	No	Yes
	G														
	UK														
	P											No	No	No	Yes

Notes:

**APL1:** Anti-personnel Landmines (APL) Phase 1: Negotiations in 1995-1996

**APL2:** Anti-personnel Landmines (APL) Phase 2: December 1996-May 1997

**APL3:** Anti-personnel Landmines (APL) Phase 3: Spring 1997-December 1997

**SALW1:** Small Arms and Light Weapons (SALW) Phase 1: Negotiation from 1998 to 2001 (including 2001 UN Small Arms Conference)

**SALW2:** Small Arms and Light Weapons (SALW) Phase 2 : Negotiation from 2001 to 2006 (including 2006 Review Conference)

**OP-AC1:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 1: October 1994-December 1998

**OP-AC2:** Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict Phase 2: January 1999-January 2000

In the small arms case, European NGOs and IANSA were extremely active during the negotiations. They were also used by the national governments to raise public awareness on the question on small arms. Throughout the negotiations on SALW, the EU and several of its

Member States were perceived as natural allies by the NGO Community. IANSA expected the EU to speak with one voice and strongly encouraged EU Member States to show a united front. In that sense, IANSA's influence supported the EU's efforts to be internally effective. However, IANSA was apparently active in a limited number of EU Member States. The majority of NGOs which created IANSA were UK-based; therefore, this coalition focused their efforts on influencing (or supporting) the UK. There is little evidence of IANSA activities in France. IANSA only had one French representative at the Review Conference. In addition, Austria and Finland, Germany and the UK included IANSA representatives in their delegations for the 2006 Review Conference. France's delegation did not include a representative from civil society. Nonetheless, IANSA generally maintained pressure on all EU Member States not only to act cohesively, but also to play a greater role in negotiations.

The Coalition to Stop the Use of Child Soldiers had constant exchanges and widely cooperated with the Nordic States including three EU Member States (Denmark, Finland and Sweden). The Coalition encouraged these states to advocate the "straight-18" position at the international level. The Coalition was in close contact with the German government, which held the Presidency of the EU in the first-half of 1999. Germany hosted the European conference on the Use of Children as Soldiers in October 1999. In contrast, the Coalition appeared to have less harmonious relations with the British government. The Coalition repeatedly singled out the UK as the EU country with the poorest record of children involved in armed conflicts. The Coalition attempted to use the bureaucratic utilization pathway in the UK but was unsuccessful. Interestingly, there is little evidence of the presence of influence of NGOs in France. In fact, the French Coalition to Stop the Use of Child Soldiers was only created in 2004.<sup>26</sup> Yet, the French government became especially active on the issue of child soldiers at the UN. When compared with other NGO coalitions studied in this thesis (ICBL and IANSA), the Coalition was created quite late in the negotiation process and only had a limited number of months (from June 1998 to January 2000) to lobby states to support the Optional Protocol. While NGOs were active in several EU Member States during negotiations of the Optional Protocol, NGOs were apparently unable to influence the EU's effectiveness (both internal and external).

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<sup>26</sup>On the Collectif, see [www.amnesty.fr](http://www.amnesty.fr)

The hypothesis formulated is confirmed by two of the three cases. It is reasonable to suggest that the presence of influence on coalitions of NGOs in EU Member States does affect positively the EU's effectiveness. The hypothesis is thus accepted.

#### **7.4 Conclusion**

This comparative analysis has identified conditions under which the EU is an effective actor at the UN in human security negotiations. The three cases studied showed a variation in both the EU's internal and external effectiveness. The EU was the most internally effective in the small arms case. However, it failed to achieve external effectiveness. The EU's effectiveness in the landmines case was variable, but ultimately, the EU did achieve both internal and external effectiveness. In contrast, the EU was not internally effective in the case of the Optional Protocol on children in armed conflicts, yet the EU was externally effective. This final analysis exposes the limitations of the definition of external effectiveness used in this thesis: the definition assumed that the EU's external effectiveness was dependent on the EU's internal effectiveness. The analysis revealed that, in some cases, the EU can be externally effective, without achieving internal effectiveness. However, it should be emphasized that in these cases, it is the external effectiveness of certain EU Member States that contributed to the success of negotiations rather than the effectiveness of the European Union as an actor. The definition of "external effectiveness" employed in this thesis should be reassessed: first, external effectiveness does not always depend on internal effectiveness; second, a distinction should be made between the EU's effectiveness and the EU Member States' effectiveness to influence negotiations. Another interesting result indicates that, in the case of children and armed conflicts, the internal effectiveness currently displayed by the EU (especially since the adoption of the EU Guidelines on children and armed conflicts) is a direct result of the negotiations of the Optional Protocol: consensus at the international level made consensus possible within the EU.

The majority of the hypotheses discussed in Chapter 3 of this thesis were either accepted or partially accepted. The comparative analysis confirmed that a high level of involvement of the Presidency, a high level of French, German and British support, the presence of a unified position in EU governments and the presence of influence of NGOs/Coalition of NGOs are conditions under which the EU is an effective actor at the UN in human security negotiations. Hypotheses on the EU's commitment to multilateralism, on the use on

consensus in negotiations, and on the position of the United States were partially accepted. Further cases should be investigated to confirm or reject these hypotheses. Only one hypothesis was rejected: a high level of participation of the European Commission does not affect the EU's effectiveness. The role of the European Commission was, to a certain extent, overestimated in the hypothesis tested. This observation is not surprising for all human security issues discussed at the UN have been characterized as CFSP issues. However, this confirms that generally EU Member States do not acknowledge the role of the Commission and its development cooperation policy in human security negotiations.

Finally, this chapter also highlighted that other independent variables may influence the EU's effectiveness. For example, the case studies showed that the position of countries other than the United States had an impact on the EU Member States achieving their objectives. The position of these states should be considered in any explanation of the EU's effectiveness on human security issues. Furthermore, by focusing on the European Union as an actor at the United Nations, this research project did not examine the role of individuals, although the interviews conducted for the research project revealed that the United Nations, especially in New York, is a personality-driven environment: *"New York is very personality driven, so everything depends on your ambassador's interests and commitment and the delegate's interests"*<sup>27</sup> and *"in terms of the UN on disarmament, [...] it's not about a country position but it's more about individuals. And you'll have some individuals who will speak a lot and achieve a lot..."*<sup>28</sup>. The observation of the importance of individuals within the UN framework underscores the limitations of using the three-level game to examine the EU as an actor at the UN in human security negotiations. Nevertheless, this comparative analysis demonstrated that the study of the EU in human security negotiations requires an analytical framework that considers the interactions between different levels of negotiation.

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<sup>27</sup> Interview with an official from an EU Member State Mission, New York, 20 June 2006

<sup>28</sup> Interview with an official from an EU Member States Mission, New York, 21 June 2006

## Conclusion

### Effectiveness, Expectations and Future Theorizing

#### 8.1 Introduction

This thesis examined the EU's effectiveness as an actor at the United Nations in the field of human security and examined the question: *under what conditions is the EU an effective actor at the UN in the policy area of human security?* The thesis argued that the two-level game metaphor, which Putman used to depict international negotiations and to show the entanglements between international and domestic politics, was a useful analytical framework to investigate the research question. Due to the European Union's distinctive nature as a global player, this thesis argued that that an analysis of three different level of negotiations (international, EU, and domestic) was required to explain the complexity of the European Union as an actor at the UN in human security negotiations. Thus, this thesis expanded Putnam's two-level game metaphor to a three-level game.

In this thesis, the concept of effectiveness (the dependent variable) was defined in two ways: internal effectiveness and external effectiveness. The thesis also developed eight different testable hypotheses on the relationship between the EU's effectiveness (dependent variable) and independent variables found at three levels of negotiations. Through the use of a three-level game approach, three cases studies were analyzed to track the conditions and test the relationship between the dependent and independent variables. The case studies selected were the ban of anti-personnel landmines, the illicit trade in small arms and light weapons, and the Optional Protocol on involvement of children in armed conflict. Each of the three case studies addressed issues that were considered part of the human security agenda as they exhibited several similar characteristics, including the focus on the protection of individuals and the emphasis on the links between issues of disarmament, development, and human

rights. Finally, a comparative analysis of the three case studies was undertaken to accept or reject the hypotheses.

This chapter provides a general discussion of thesis' research results. It will also demonstrate the thesis' contribution to the study of the EU in world affairs and to the field of International Relations. This chapter is divided in four sections. The first section highlights the primary results of this thesis. It argues that in recent cases of human security negotiations, the EU's effectiveness was inconsistent. It also discusses the conditions that affected the EU's effectiveness. The second section links the thesis' findings to the study of the EU as a global actor. This section argues that this research emphasizes the importance of EU Member States and of domestic politics in the explanation of European integration and European foreign policy and thus, supports liberal intergovernmentalist arguments. However, the research has also highlighted some of the shortcomings of liberal intergovernmentalism when examining the EU as an actor in international negotiations. The section then explores the implications of the findings on the study of European institutions in the EU's external relations. The third section considers the potential contributions of this thesis to the study of international negotiations and the discipline of International Relations. This thesis has demonstrated that the study of the EU in human security negotiations requires the integration of international and domestic level of analysis as well as an additional level of analysis (the EU level). As the thesis has refined the two-level game metaphor, this section will examine the theoretical conceptualization of the two-level game metaphor. Finally, the fourth section of this chapter evaluates avenues for future research.

## **8.2 EU effectiveness and human security at the UN**

The comparative analysis in this thesis has shown that, in recent cases of human security negotiations, the EU was unable to be consistently<sup>29</sup> effective. EU Member States not only

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<sup>29</sup> On the issue of consistency in the EU see S. Nuttall, "Coherence and Consistency" in C. Hill and M. Smith, *International Relations and the European Union*, Oxford, Oxford University Press, 2005, pp.91-112. On the EU, human security and consistency, see J. Alcalde and C. Bouchard, "Human Security and Coherence within the EU; the Case of the 2006 UN Small Arms Conference", *Hamburg*

struggled to speak with one voice (be internally effective) in the cases of the Ottawa Process, but failed to reach a common position in negotiations on the Optional Protocol on child soldiers. The small arms and light weapons case was the only example where the EU displayed internal effectiveness; however, the strong insistence on national priorities of certain EU Member States in the 2006 Small Arms Review Conference caused the internal effectiveness to crumble. The European Union as a collective actor also frequently failed to achieve its objectives and influence negotiations (external effectiveness). While the EU achieved internal effectiveness, it was unable to influence other actors in the UN to support the adoption of an outcome document that would strengthen the 2001 Programme of Action on small arms. Furthermore, in cases where negotiations were successful in achieving an agreement, the success of negotiations owed more to the work of certain EU Member States rather than the EU's external effectiveness. This was particularly the case of the Optional Protocol on children in armed conflict.

The comparative analysis revealed several factors that affected the EU's effectiveness. It should be emphasized that the conditions identified are not sufficient; this is the only factor that can explain the EU's effectiveness. Yet, evidence from the case studies suggests that some conditions are necessary for the EU to increase its effectiveness at the UN. Indeed, four conditions were accepted as positively affecting the EU's effectiveness: a high level of involvement of the EU Presidency, a high level of French, German and British support, the presence of a unified position within EU governments, and the presence of influence of NGOs/Coalition of NGOs.

The case studies confirmed that a higher level of involvement of the Presidency increases the EU's effectiveness, particularly its internal effectiveness. A high level of involvement of the Presidency was observed in the case of small arms and light weapons where the EU was particularly internally effective. However, the research also revealed that in situations where EU Member States have extreme positions, a Presidency that is "reformist" may have more difficulty in convincing their EU partners to find a common EU position. A higher level of French, German and British support also affected the EU's effectiveness in all three cases.



This is was particularly visible in negotiations about conventional weapons such as landmines and small arms and light weapons. The position of these three countries influenced the position of other (smaller) EU Member States. The Big Three also influenced one another's positions. In addition to these two conditions, the anti-personnel landmines and the Optional Protocol on child soldiers cases confirm that internal bargaining (that involves the ministries of foreign affairs and the ministries of defence) can be genuine obstacle to EU Member States in reaching a consensus on human security issues. In contrast, the presence of a unified position in EU governments, as in the small arms case, reinforces the EU's effectiveness. The case studies also provided strong evidence of the presence of influence of NGOs. However, some EU Member States, especially Germany and the UK, have apparently witnessed more NGO activities than their EU partners. In these countries, coalitions of NGOs were significantly active when a shift in the government policy was desired.

Three factors partially shape the EU's effectiveness: the EU's commitment to multilateralism, on the use of consensus in negotiations, and on the position of the United States. The case studies show that generally a higher degree of commitment to multilateralism increases the EU's internal effectiveness. Yet, the degree of the EU's commitment to multilateralism does not have a significant influence on the successful conclusion of negotiations. The comparative analysis also revealed that the EU does generally struggle to be internally and externally effective in negotiations based on consensus. However, the case of the Ottawa Process, which was based on majority voting, also suggests that the EU's effectiveness increases when voting is used in negotiations. The position of the United States does have an effect on the EU's effectiveness – especially its external effectiveness. However, an increase of the EU's effectiveness is not necessarily the result of a positive US position. In fact, the small arms case revealed that US opposition actually encouraged EU Member States to work collectively and strengthen the EU's internal effectiveness. Although the United States is an important actor in the UN, it is not the only actor. The case studies also reveal that other actors such as the G-77 are also significant actors in negotiations and that their positions on an agreement should be considered.

Lastly, one condition, the involvement of the Commission, does not affect the EU's effectiveness in human security negotiations. Even in the case of small arms and light

weapons where the Commission displayed a high level of participation, it had little impact on the EU's effectiveness in human security negotiations.

### **8.3 Studying the EU and human security at the UN**

The findings of this thesis have several implications for the study of the European Union as a global actor. First, several of the conditions that shape the EU's effectiveness relate to the role of the Member States in negotiations. This is not surprising as the European Union is not a member of the United Nations (and is unlikely to become one in the near future) and EU Member States remain the primary decision-makers at the UN. The EU's effectiveness at the UN reflects the willingness of EU Member States to work collectively and to favour EU output. In addition, when addressing the issue of human security at the UN, the support for EU action of three particular EU Member States, France, Germany and the UK, can have significant consequences.

Second, this thesis has demonstrated that domestic politics should be seriously considered in any attempt to explain EU's foreign policy, especially its Common Foreign and Security Policy. The cases examined show that internal bargaining within EU Member States directly impacts the EU's effectiveness as an actor. Divisions within EU governments on specific issues can hinder the EU's ability to speak with a single voice. This was particularly apparent in the cases on the ban of anti-personnel landmines and the Optional Protocol on children and armed conflicts.

These observations confirm the view of liberal intergovernmentalism that not only gives EU Member States a crucial role in decision-making process, but also states that the preferences of states are shaped by domestic politics.<sup>30</sup> However, the research of this thesis highlights the limitations of liberal intergovernmentalist approach. Intergovernmentalists do not thoroughly consider the possibility that external actors can influence the positions of EU

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<sup>30</sup> See A. Moravcsik, *The Choice for Europe. Social purpose and State Power from Messina to Maastricht*, London, UCL Press, 1998.

Member States. The research suggests that two external actors to the EU had an influence or partial influence on the EU's effectiveness: the United State and coalitions of NGOs.

The United States position partially affected the EU's effectiveness. The findings demonstrate that the US position can have a dividing or unifying effect on the EU Member States. The case studies also demonstrated that the United States' "special relationship" with the United Kingdom can affect negotiations at the international level as well as impacting the EU's effectiveness. The United States thus becomes a player and has an influence in the CFSP system.

In all three cases studied, coalitions of NGOs became significant players in the domestic game. NGOs were particularly effective in mobilizing public opinion, which in turn, produce incentives for national governments to act. Furthermore, the European Union is generally perceived as a natural ally by the NGO Community. NGOs expect the EU to speak with one voice and have strongly encouraged EU Member States to be united. These findings imply that NGOs and their role in negotiations must be considered when explaining the behaviour of the European Union and its Member States in negotiations. These observations indicate that when liberal intergovernmentalism neglects the role of external actors, it fails to acknowledge potential influential factors.

While the research confirms that EU Member States continue to be central players at the UN, it also offer insights into the role of the European institutions. The EU level was inserted in the two-level game metaphor to highlight the role of specific actors and institutions within the EU. The comparative analysis of the case studies has revealed that in human security negotiations, the EU level is important when setting general guidelines and objectives. The Council of Ministers has a role in so far as the Presidency of the Council represents the EU at the UN. The EU Presidency can play a significant role in negotiations, but only to the extent that the EU is united regarding issues that are being negotiated. If EU Member States lack the willingness to work together through the EU and to develop a common position, then the role of the Presidency can be quite limited (if nonexistent) at the international level. The Council also sets the general guidelines and broader objectives of the EU. Negotiations within the Council are thus significant in the development of a common position in the EU and in the achievement of internal effectiveness. Yet, in specific negotiations, a two-level

game (Geneva-New York, capitals) apparently eclipses the three-level game (Geneva-New York, EU level, capitals). Do these observations imply that the EU level should be abandoned when examining the international negotiations of the EU on CFSP issues? Additional case studies would need to be examined to answer this question; however, there is evidence that negotiations at the EU level – even if they fail to produce a common position within the EU – encourage EU Member States to re-evaluate their position vis-à-vis human security agreements. This suggests that negotiations at the EU level do have an impact and should be considered in a formal model that theorizes the EU as an actor in international negotiations.

Until now, UN issues addressed in human security negotiations have occurred within CFSP, thus limiting the role of the European Commission in negotiations. The involvement of the Commission has little influence on the EU's effectiveness in human security negotiations. Most human security issues are defined as CFSP issues, thus the participation of the Commission is limited. The Commission officials are usually invited to UN meetings that address human security issues, but are not allowed to participate in negotiations.<sup>31</sup> This thesis did not analyze the role of the European Parliament. This institution was often the first EU institution to address the issue at the EU level and encouraged Member States to find common position in all three cases studies. However, in the cases examined, the European Parliament was not an important actor at the UN in human security negotiations.

In contrast to other international organizations, such as the WTO, the involvement of EU institutions in general negotiations at the UN is often limited to observation. The participation of the Commission in negotiations at the UN is still, in general, regarded as a delicate issue, even when the issues discussed are within the Commission's competency. One interviewee noted that non-EU Member States are reluctant to give the European Commission member state rights at the UN as this could potentially affect the dynamics of negotiations, especially in the Security Council.<sup>32</sup> Nonetheless, non-EU Member States see the European Commission as an important interlocutor: the Commission may help partners to better understand the position of EU Member States regarding certain human security

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<sup>31</sup> Interview with an official from the European Commission, DG Relex, Brussels, 17 October 2007.

<sup>32</sup> Interview with an official from EU Member States Mission, New York, 20 June 2006.

issues.<sup>33</sup> Unless substantive reforms are introduced within the EU as well as within the UN, European institutions are likely to remain supporting actors at the United Nations.

#### ***8.4 A multilevel game approach to international negotiations***

This thesis also examined the encounter between the study of international negotiations and the study of the EU as a global actor. This next section is designed to have an “analytical spill back function”<sup>34</sup> and to demonstrate this thesis’ contribution to the debates on international negotiations in the field of International Relations. This section, first, argues that this thesis strengthened Putnam’s arguments that “state-centric” or systemic theories do not offer explanations of how domestic and internal politics are interrelated. The case studies examined in this thesis have demonstrated that assessing the EU’s effectiveness requires the understanding of interactions between the three levels of negotiations. This project emphasized the importance of integrating, rather than “adding” or “superimposing”, three levels of analysis. Second, this section advances the theoretical conceptualization of the two-level game metaphor. More specifically, it offers specifications and definitions on three specific sets of questions: domestic politics, the environment of international negotiations, and the negotiators’ preferences.

##### *Three levels of reverberations*

This thesis has shown that the entanglements of three levels of negotiations are a crucial component of the explanation of the effectiveness of the EU in human security negotiations. It thus reinforces Putnam’s argument that state-centric and systemic theories that have examined domestic causes and international effects or international causes and domestic effects “miss an important part of the story”.<sup>35</sup> First, while these theories recognize the existence of domestic politics and even stress that states may use the mobilization of

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<sup>33</sup> Interview with an official from the Permanent Mission of Canada to the UN, New York, 15 June 2006.

<sup>34</sup> K. E. Jørgensen, “Overview: The European Union and the World” in K.E. Jørgensen, M. A. Pollack and B. Rosamond, *Handbook of European Union Politics*, London, Sage Publications, 2007, p.520.

domestic bargaining resources to realize their preferences, these theories argue that international outcomes are primarily influenced by international environment. Second, in the view of systemic theories, states function in the international environment as if they are unitary actor (even if this not accurate).<sup>36</sup> In this sense, systemic theories are limited when examining a multifaceted and multilevel actor such as the European Union. The two-level metaphor, which argues that *interaction* between levels of negotiations should be considered and that different groups of actors within states have power over decision-making, is thus a more convincing analytical tool in the examination of negotiations that involve an actor such as the European Union.

The two-level game metaphor implies that there is reverberation between the two levels of negotiations: “strategies and outcomes at different levels of the game simultaneously affect one another.”<sup>37</sup> In the case of human security negotiations, this thesis has demonstrated that reverberation occurred at the three levels of analysis. First, domestic policies in specific Member States were used to affect negotiations both at the EU and the international level. Second, negotiations at the EU level also shaped negotiations at the domestic and the international level. Finally, debates at the international level had repercussions on the two other levels and were used to achieve both EU and domestic goals.

In the three cases studied in this thesis, domestic politics influenced negotiations both at the EU and international level. First, EU governments that experienced difficult internal bargaining struggled not only to support the EU initiatives to achieve effectiveness, but also to be considered influential players in the negotiations. This was particularly apparent in the ban of anti-personnel landmines and the Optional Protocol on children and armed conflicts. At the domestic level, the presence of coalitions of NGOs also affected the EU’s effectiveness. These networks primarily strove to modify the behaviour of EU Member States. To persuade EU Member States to change their position, NGOs incorporated

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<sup>35</sup> R.D. Putnam, “Diplomacy and domestic politics: the logic of two-level games”, *International Organization*, vol.42, no.3, 1998, p.430.

<sup>36</sup> On the limitation of systemic theories to integrate international and domestic politics, see A. Moravcsik, “Introduction. Integrating International and Domestic Theories of International Bargaining”, in P. Evans et al. (eds.), *Double-Edged Diplomacy. International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993, pp.6-9.

<sup>37</sup> L.A. Patterson, “Agricultural policy reform in the European Community: a three-level game analysis”, *International Organization*, vol.51, no.1, 1997, p.142.

international level issues in domestic debates. On this point, the International Campaign to Ban Landmines was particularly successful in publicizing the Ottawa Process in EU countries that were reluctant to endorse a comprehensive ban on landmines.

Outcomes of negotiations at the EU level affected and were affected by both negotiations at the domestic and the international level. In the small arms case, the European Union used international negotiations to address questions that had been discussed at the EU level. Achieving an agreement on the issues at the international level could only facilitate the EU in the achievement of its own objectives. Furthermore, negotiations at the EU level also pressed EU Member States to address the issues discussed at the domestic level. While discussions at the EU level affected both domestic and international negotiations, the EU level clearly experienced reverberations from the two other levels. The research reveals that several key players (including France, Germany, the United Kingdom and the Council's Presidency) influence negotiations on human security at the EU level. The extent to which these players became influential in negotiations at the EU level was based on the state of their domestic politics. For example, EU countries that suffered from internal divisions were rarely capable of exercising any leadership at the EU level. Furthermore, in all three cases studied, international negotiations had an effect on the EU's effectiveness: they encouraged the EU to consider uniting on the issue. In two of the cases (anti-personnel landmines and small arms and light weapons) "pressures" from the international level had positive consequences in prompting debates at the EU level on the role the European Union should play in negotiations. In contrast, in the case of the Optional Protocol on child soldiers, negotiations at the international level not only exposed the extent to which the EU was unable to play any kind of role in negotiations, but also exacerbated divisions in the EU camp. The more divided EU Member States were divided at the international level, the less the European Union was able to find a common position on the issue.

Lastly, negotiations at the international level reverberated both at the EU and the domestic level. As highlighted in the above section, negotiations at the international level fuelled debates at the domestic and the EU level, but also were deeply influenced by the presence of divisions both within EU governments and between EU Member States. This thesis has argued and confirmed Putnam's argument first, that the omission of any level would limit the understanding of negotiations; second, that the assessment of *interactions* of the three levels

can only lead to better understanding and potential theorization of the domestic and international influence on international bargaining.

### *Moving towards a theoretical conceptualization*

As Putman has rightly stressed, “[m]etaphors are not theories”.<sup>38</sup> The two level-game is a useful analytical framework to explore international negotiations; however, it remains a *metaphor*. Moravcsik argues that if the two-level metaphor is to become a theoretical model, three sets of definitions and specifications are needed: first, specifications of domestic politics; second, specifications of the environment of international negotiations; third, specifications of the negotiators’ preferences.<sup>39</sup> The following sections explore key findings of the case studies that may help to refine the three sets of definitions and specifications and to contribute to the development of the game metaphor into a theoretical model. Future theorizing should consider the causal relationship between these factors and successful negotiations outcomes.

### *Domestic Politics: Internal Bargaining and Transnational Coalition of NGOs.*

This thesis has illustrated that domestic politics are an important part when determining whether the European Union is internally and externally effective at the UN in human security negotiations. The two-level game metaphor focuses on the importance of the ratifying process. Putnam defines “ratification” as any decision-process at the domestic level that is required to endorse or implement an international agreement whether formally or informally. At the domestic level, two factors were identified as having a shaping influence on the ratification process: internal bargaining within EU governments and the influence of NGOs/Coalitions of NGOs.

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<sup>38</sup> *Ibid.*, p.435.

<sup>39</sup> A. Moravcsik “Introduction: International Bargaining and Domestic Theories of International Bargaining” in P.B Evans et al. (eds.), *Double-Edged Diplomacy- International Bargaining and Domestic Politics*, Berkeley, University of California Press, 1993, p.23.



Internal bargaining is a crucial part of the ratification process in EU Member States. Players in the internal game may have competing interests and the position defended by a specific government in international negotiations is partly the result of internal bargaining. This research shows that internal disputes regarding human security agreements often oppose the Ministry in charge of foreign affairs and the Ministry of Defence. At the domestic level, internal dissensions can complicate or prolong the ratification process, especially if the potential losers make their case known to national institutions in charge of formal ratification of the agreement. Second, finding a consensual position in a government can take considerable time and energy. Players in internal bargaining who may potentially “lose out” if the agreement is approved often must be accommodated or compensated, especially if they give their public support to the agreement on the Table. Intragovernmental bargaining can complicate negotiations not only at the domestic level, but also at the international level.

At the international level, difficult internal bargaining may entail that negotiators have their “hands tied” and thus have less leeway to compromise. Internal divisions within a government may also be exploited by those opposed to the agreement. On the other hand, negotiations at the international level can also pressure divided governments to find a unified position. Furthermore, intense international negotiations may create a sense of urgency and encourage various groups within a government to rapidly reach a consensus on the issue. The importance of internal bargaining and the role of certain ministries in this type of bargaining should thus be integrated into a theoretical model to explain the success and failure of international actors when approving international agreements.

Similarly, the influence of NGO should be considered when examining the EU as a global actor, the influence of NGOs in a two-level game on the success or failure of international negotiations should be investigated. NGOs contribution to negotiations may vary between cases. In the cases examined in this thesis, most domestic NGOs were either part of or had strong links with the international coalition of NGOs formed to address specific issues that were negotiated at the international level. International coalitions of NGOs can mobilize public opinion, lobby government and disseminate information to groups within national governments. They may also participate in negotiations at the international level. To date, the contribution of NGOs in negotiations is limited to the domestic level, as they have mostly been excluded from formal negotiations at the international level. States remain the vital players for the successful conclusion of negotiations, but the role of NGOs coalition

may be crucial in the pre-negotiation phase including for the emergence of the issue on the international agenda. Furthermore, NGOs can become key players in the development of coalitions of like-minded governments and international organizations and thus impact the dynamics of negotiations. Indeed, coalitions of like-minded governments have been influential players in the successful conclusion of several human security negotiations.<sup>40</sup> The role of coalitions of NGOs in the creation of link-minded groups of states should also be considered in a theoretical model explaining international bargaining.<sup>41</sup>

#### *Environment of International Negotiations: Voting versus Consensus*

At the international level, the research of this thesis suggests that further consideration should be given to the negotiating conditions, more specifically to decision-making rules used in negotiations. Decisions by vote rather than the use of consensus apparently increases successful negotiations. It also has a direct impact on the united EU and their influence on negotiations. In addition to the case of the ban of anti-personnel landmines examined in this thesis, the case of the International Criminal Court (ICC) and the recent treaty banning the use of cluster bombs confirm this proposition. It should be emphasized that using voting does not necessarily entail removing negotiations from traditional negotiating forums, as in the case of the Ottawa Process. What is more important is that the option of voting is available in the case of strong dissensions. Voting, however, may also entail potential limits for the agreements reached at the international level. Despite the fact that three cases of negotiations aforementioned were successful, they were also opposed by major international players, most notably the United States, Russia (except in the case of the ICC), and China.

Consensus based negotiations have the advantage of including all parties. The findings of this thesis suggest that reaching consensus on an issue may become more important than the adoption of a stringent agreement. This can have a positive and negative effect on agreements. For the sake of consensus, some countries may abandon their more

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<sup>40</sup> See D. Hubert, *The Landmine Ban: a Case Study in Humanitarian Advocacy*, The Thomas J. Watson Jr. Institute for International Studies, Occasional Paper #42, Providence, Brown University, 2000.

<sup>41</sup> On the subject of coalitions of NGOs and like-minded states and human security negotiations, see F.O.Hampson with H.Reid "Coalition Diversity and Normative Legitimacy in Human Security Negotiations", *International Negotiation*, vol.8, 2003, pp.7-42.

“conservative” positions and join the majority. Conversely, “reformist” countries may decide to renounce more stringent commitments as this may jeopardize a consensus. Concluding successful negotiations becomes more important than the end result. Agreements adopted under consensus can often be diluted version of the stronger agreements that were initially negotiated. Although the use of consensus has been recently criticized, working by consensus is an important feature of the UN system and promotes cooperation. Thus, it has been argued that favouring voting over consensus in negotiations would be harmful to the United Nations.

#### *Preferences of Negotiators*

This thesis has focused on the European Union as an actor at the United Nations. By doing so, this research project has overlooked the role and preferences of one key player in Putnam’s two-level game metaphor: the statesperson or “chief of government” (COG). However, the case studies reveal that the United Nations is a personality-driven environment. Further attention should be given to study of the role and preferences of individuals in negotiations. Data collection has also revealed that most EU Member States, ambassadors or officials in New York and Geneva are given a certain degree of autonomy from the capitals. These two observations indicate that the preferences of the “statesperson” can be significant in the analysis of the behaviour of an EU Member States in negotiations. The “statesperson’s” preferences and strategies may become a significant factor in the analysis an EU Member States’ behaviour during negotiations. Furthermore, the role and preferences of the chair in negotiations also has a decisive effect on the success or failure of negotiations. For example, the end result of negotiations may be very different if the chairperson gives more importance to concluding successful negotiations by consensus than adopting stringent commitments and standards. A strong chairperson who is well-organized may also contribute to the success of negotiations and should be considered in a formal theoretical model.

### **8.5 Conclusion and Perspectives**

With its strong commitment to human rights, development and humanitarian assistance, the EU was a serious contender to be a leader in the promotion of human security at the United Nations; however, the EU's response has focused on managing expectations, rather than aspiring to meet high expectations. The EU has not yet become a "force for goodness"<sup>42</sup> in the policy area of human security. In some sense, the European Union has failed to strengthen and advance the United Nations' work in this area and thus, failed to promote "effective multilateralism". It remains clear that the concept of human security, that is, as yet to be fully integrated as a guiding principle in the EU's external policy. At the present, the European Union is not a "normative power" that emphasizes the protection and "rights of individuals and not only the right of states to sovereign equality".<sup>43</sup> Protecting individuals has not yet developed into a core principle of the EU's foreign policy and it is unknown if the EU will ever adopt a human security approach. However, as Matlary rightly argued, human security may be useful as a rhetorical tool and there could be severe ethical consequences if rhetoric promises more than the EU enacts.<sup>44</sup>

Nonetheless, EU Member States have begun to recognize another important feature of human security: an effective response to disarmament issues need to encompass development and human right aspects. This thesis has revealed that the involvement of EU actors responsible for development cooperation and humanitarian assistance has been limited. In the three cases studied, the European Commission did not become a significant player. A recent judgement of the European Court of Justice (ECJ) indicates that this may change in the future. On 20 May 2008, the Court delivered its judgement in Case 91 C-91/05 *Commission versus Council*. The Judgement concerned a Council decision implementing a Joint Action (2002/589/CFSP) on a moratorium on small arms and light weapons in ECOWAS (Economic Community of West African States).<sup>45</sup> The Judgement of the Court is interesting as it emphasizes the view of both the EU Member States and the Commission as

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<sup>42</sup> On this concept, see K.E., Jørgensen and K. Laatikainen, *The European Union and the United Nations*, Second Pan-European Conferences. Standing Group on EU Politics, no.293, Bologna, 24-26 June 2004.

<sup>43</sup> H. Sjursen, "The EU as a "normative" power: how can this be?", *Journal of European Public Policy*, col.13, no.2, March 2006, p.249.

<sup>44</sup> Matlary, J.H., "Much ado about little: the EU and human security", *International Affairs*, vol.84, no.1, 2008, pp.143.

<sup>45</sup> Case C-91/05, *Commission v Council*, 20 May 2008, OJ C 115, 14.05.2005, p. 10.

to who should have the competence to act to combat the proliferation of small arms and light weapons.

The judgement reveals that the Commission, supported by the European Parliament, argued that the fight against the proliferation of small arms and light weapons had become an integral part of its development cooperation policy and thus fell within the scope of the competences conferred on the Community. According to the Commission, cooperation in the long-term development of a country can be effective only where there is stability and democratic legitimacy. The Commission argued that policies such as decommissioning on SALW and mine clearance constitute indispensable means to achieve the objective of development cooperation policy. In opposition, the Council contended that the campaign against the spread of SALW was part of the CFSP's fundamental objective, the preservation of peace and the strengthening of international security. The Council argued that neither the campaign against the spread and accumulation of SALW, nor the more general objectives of preserving peace and security fell within the competences conferred on the Community. It also contended that according to the treaties, the main objective of Community development cooperation is the reduction of poverty and that though the SALW may incidentally affect the prospects for sustainable development does not mean that it should fall within Community competences.

The Court did not form a judgement on whether the combating the spread of SALW is part of the CFSP or development cooperation policy. It did, however, note that certain measures aiming to prevent fragility in developing countries, including those adopted to combat the proliferation of small arms, can contribute to the elimination or reduction of obstacles to the economic and social development of those countries. According to the Court, the Joint Action was part of a general perspective of preserving peace and strengthening international security, but also had the specific objective of strengthening the capacities of a group of developing countries to combat a phenomenon that constitutes an obstacle to the sustainable development of those countries. Ultimately, the Court judged that the objectives of the Joint Action was not only within CFSP, but also a Community development policy and should have been adopted under the EC treaty and not the EU treaty.

It will be interesting to observe the reaction of the EU Member States and the Commission to the judgement. This reaction may have a direct impact on whether the EU and more

importantly, EU Member States decide to adopt a human security approach in EU's foreign policy. Following this judgement, EU Member States will have to become very cautious in their approach to issues that are part of the human security agenda. If they acknowledge that certain issues are part of the general objective of the CFSP but are also obstacles to sustainable development, then they encounter the possibility that CFSP instruments adopted to address these issues will be challenged by the Commission. By recognizing fundamental aspects of human security, EU Member States may also instigate the Community's involvement in this domain. The Commission's reaction will also be interesting to observe. Will the Commission portray other issues that are currently within CFSP framework, for example, cluster munitions, as integral parts of its development policy? The outcome remains to be seen. Nevertheless, these questions suggest that the debate on human security within EU should not be discarded.

In recent years, negotiations have led to the signature of landmark treaties on issues such as landmines, child soldiers, and the creation of the International Criminal Court (ICC). All these initiatives have focused on the protection of civilians. However, much work remains to ensure the security of individuals and civilian populations and it is unclear if the European Union will ever become a significant player in this field. The EU has been a strong supporter of the concept of "Responsibility to Protect".<sup>46</sup> This concept means protecting civilians from genocide, war crimes, ethnic cleansing or crimes against humanity.<sup>47</sup> Recent events in various parts of the world have reignited the debate on this concept. The question of the international community's intervention in the protection of civilians will undoubtedly dominate debates at the UN Security Council for years to come. The development of its military capabilities for humanitarian assistance gives the European Union an ideal opportunity to become a major player in the international community's commitment to "never again". Only the future will tell, if in this case, the EU will aspire to meet higher expectations. Therefore this topic deserves continued scholarly attention.

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<sup>46</sup> At the UN World Summit in 2005, the European Union firmly supported of the inclusion of this concept in the Summit Outcome Document. See EU Presidency Statement- UN 2005 World Summit, 14 September 2005, New York.

<sup>47</sup> On this concept, see Report of International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa, the International Development Research Centre, December 2001. Interestingly the Report does stress the importance of human security, however it refrains from using this concept in the sections on ways to take things forwards.

# **APPENDIX I**

## **Research Notes**

When research first started on this thesis, secondary literature on the EU in human security negotiations was practically non-existent. It rapidly became clear that interviews would be the most effective way to obtain information that could not be found in documents.

A total of 22 interviews were conducted between June 2006 and April 2008 in New York (June-July 2006), Brussels (October 2006) and Geneva (April 2008). The interviewees included officials from EU Member States' Missions to the UN both in New York and Geneva, officials from non-EU Member States' Missions in New York and Geneva, officials of the European Commission and NGOs delegates (for a complete list see Appendix II). Almost all the interviews were conducted in person; one interview was conducted via email. All the interviews were conducted on a non-attributable basis to encourage the interviewees to express themselves freely and honestly.

Almost all face-to-face interviews were recorded. All the interviews were transcribed and general notes were taken. In all cases, interviewees were sent via email a short description of the research project and a list of broad questions and topics to be raised in the interview. Interviews were conducted in English and in French. Most interviews lasted between 50 minutes to an hour. However, the interviews conducted during the Review Conference (June July 2006) were shorter due to time constraints. Five interviews lasted between 1.30 hours and 2 hours.

In addition to formal interviews, data was collected using non-participant observation. This observation took place during the United Nations Small Arms Review Conference 2006 (26 June-7 July) in New York. Getting access to the Conference revealed itself to be more complicated than first thought. However, through contacts in the UK Mission to the UN in New York, the International Action Network on Small Arms (IANSA) offered the author an

NGO accreditation to the Review Conference. The author was able to attend almost all the High-level plenary meetings of the Review Conference and was also allowed to attend the IANSA's (International Action Network on Small Arms) daily coordination meetings. The author also attended several of the Conference Side Events including those organized by EU Member States and UN agencies. While at the Conference, the author witnessed first hand the procedures of coordination between EU member states and acquired valuable knowledge of UN practices and procedures. The author also gained access to primary documents from the Review Conference that were not made available to the public. For the interviews conducted during the Review Conference, the author made sure to stress that she was not a delegate of IANSA to encourage the interviewees to speak freely and honestly. The author also checked with IANSA that the information gathered during the IANSA meetings could be used in the thesis. The only negative aspect of the time spent at the Review Conference was the fact that the demanding agenda and schedule of the Review Conference and the intense negotiations meant that the time spent with the interviewees was often limited.



## **Appendix II**

### **List of Interviews**

#### **New York (June-July 2006)**

- Interview with an official from UK Mission to the UN.  
(08/06/2006)
- Interview with an official from the Permanent Mission of Canada to the UN  
(15/06/2006)
- Interview with an official from an EU Member State Mission to the UN  
(20/06/2006)
- Interview with an official from UK Mission to the UN  
(20/06/2006)
- Interview with an official from an EU Member State Mission to the UN  
(21/06/2006)
- Interview with an official from an EU Member State Mission to the UN  
(27/06/2006)
- Interview with an official from an EU Member State Mission to the UN  
(29/06/07)
- Interview with an official from an EU Member State Mission to the UN  
(28/06/2006)
- Interview with an official from an EU Member State Mission to the UN  
(28/06/2006)
- Interview with an official from an EU Member State Mission to the UN  
(28/06/2006)
- Interview with Saferworld official (06/07/2006)
- Interview with IANSA delegate (07/07/2006)
- Interview with IANSA delegate (10/07/2006)

#### **Brussels (October 2006)**

- Interview with an official from the European Commission – DR Relex (17/10/2007)
- Interview with an official from the European Commission – DR Relex (17/10/2007)
- Interview with an official from the European Commission – DR Relex (19/10/2007)
- Interview with an official from the European Commission – DR Relex (19/10/2007)

#### **Geneva (April 2008)**

- Email Interview with an official from Canadian Mission to the UN (17/04/2008)
- Interview with an official from an EU Member State Mission to the Conference on Disarmament (21/05/2008.)
- Interview with an official from the European Commission – EC Delegation in Geneva (22/04/2008)
- Interview with an official from an EU Member State Mission to the UN  
(22/04/2008)
- Interview with an official from an EU Member State Mission to the UN  
(22/04/2008)

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